March 22, 2010

Revised -- AGENDA --

April 1, 2010 10:00 a.m. – 5:00 p.m. Secretary of State's Office Auditorium 1500 11th Street Sacramento, California 95814

At the discretion of the Delta Stewardship Council, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action. Order of agenda items is subject to change.

- 10:00 a.m. 1. Welcome and Introductions
 - 2. Oath of Office
 - 3. Roll Call Establish a Quorum
 - 4. Election of Council Chair (Action Item) (Water Code §85200(e))
 - Designation of Interim Executive Officer (Action Item) (Water Code §85201(d))
 - 6. Interim Executive Officer's Report
 - a. Staff Report Describing the Statutory Mission and Potential Organization of the Delta Stewardship Council

Attachment 1: Text of SBX7 1 & 2009 Comprehensive Water Package http://www.water.ca.gov/news/newsreleases/2009/01272010waterpackage.pdf

Attachment 2: Executive Management Personnel

Attachment 3: Interim Organization Chart

Attachment 4: Grant Agreements and Contracts

Attachment 5: FY 09-10 Budget

b. Legislative and Legal Briefing

- 7. Council Administration and Operations
 - a. Proposed Procedures for Delta Stewardship Council (Information Item) (Water Code §85210(i))

Attachment 1: Procedures for Delta Stewardship Council

Proposed Delegation of Authority to the Executive Officer (Action Item) (Water Code §85210(d))

Attachment 1: Delegation of Authority

c. Legal/Administrative Report

Attachment 1: Conflict of Interest Code Adoption Procedures

Attachment 2: Conflicts of Interest http://ag.ca.gov/publications/coi.pdf

Attachment 3: The Bagley-Keene Open Meeting Act 2004 http://ag.ca.gov/publications/bagleykeene2004_ada.pdf

8. Delta Science

 a. Introduction to the Delta Science Program and Council Authority under Enabling Statutes (Water Code §85280)
 PowerPoint Presentation: The Delta Science Program

Attachment 1: Delta Science Program One-Sheet

- b. Designation of the Interim Delta Lead Scientist (Action Item) (Water Code §85280(b))
- c. Procedures for Selection of the Delta Independent Science Board (Action Item) (Water Code §85280(a))
- d. Delta Science Program Proposal Solicitation Package for Research Grants (Information Item) (Water Code §85210(g), Water Code §85280(b)(4))

PowerPoint Presentation: 2010 Focused Proposal Solicitation

Attachment 1: Draft Delta Science Program 2010 Focused PSP Document

9. Delta Plan

PowerPoint Presentation: Delta Plan **Attachment 1:** Informational Timelines

a. Option to Retain Consultant Assistance for the Delta Plan (Action Item) (Water Code §85210(b))

Attachment 1: List of Qualifications Requested in the Delta Plan RFQ

 b. Development of the Delta Plan Consistent with the Coastal Zone Management Act (Information Item) (Water Code §85300(d)) Attachment 1: San Francisco Bay Conservation and Development Commission Memorandum to Greg Bourne, Facilitator, Delta Vision Governance Work Group dated May 1, 2008

Attachment 2: California Department of Justice Letter to John Kirlin dated September 8. 2008

Attachment 3: CZMA Federal Consistency Overview, February 20, 2009, Office of Ocean and Coastal Resource Management, NOAA

- Attachment 4: Figure 1: Map (Not included w/handouts at meeting)
 c. Establishment of Delta Plan Agency Coordination Group (Action
- Item) (Water Code §85204)d. Request for Federal Participation in Delta Plan Development (Action
- Item) (Water Code §85082)
 e. Direction for Development of Interim Plan (Action Item) (Water Code §85084)

Attachment 1: Interim Plan Outline

- 10. Direction to Chair to Consult with SWRCB on Selection of Delta Watermaster (Action Item) (Water Code §85230)
- 11. Public Comment

Jonas Minton, PCL, "8 Affordable Water Solutions for California" http://www.pcl.org/pdfs/8-Affordable-Water-Solutions.pdf

12. Preparation for Next Council Meeting – Discuss and approve (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; possible recommended legislative items for staff background work; and (d) set next meeting date.

5:00 p.m. Adjourn

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Designation of Interim Executive Officer

Requested Action: This action would designate Joe Grindstaff as interim Executive Officer, to administer and manage the day-to-day operations of the Council. A separate action item on this agenda would delegate specific authorities to the Executive Officer in this regard.

Recommendation

In order to provide, at the earliest possible time, for operational efficiency and effective management of staff and resources, staff recommends that the Council adopt the following resolution:

"The Delta Stewardship Council hereby designates Joe Grindstaff as interim Executive Officer, to administer and manage the day-to-day operations of the Council, under the general guidance and at the pleasure of, the Council."

Background

Water Code Section 85201(d) requires the Council to appoint an Executive Officer who shall serve full time at the pleasure of the Council.

Effective February 3, 2010, Water Code Section 85034(e) transferred to the Council all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program.

This statutory transfer of staff to the Council included Joe Grindstaff, who had been serving as Director of the CALFED Bay-Delta Program and Deputy Secretary for Water Policy in the Natural Resources Agency. Prior to joining CALFED, Joe served as Chief Deputy Director of DWR and, before that, as General Manager of the Santa Ana Watershed Project Authority. Earlier in his career, he served in leadership roles at other water districts and municipalities.

Mr. Grindstaff has expressed an interest in serving as Executive Officer on an interim basis, as the Council is getting started.

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Fiscal Information

Not applicable

List of Attachments

None

Contact

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Chief Counsel

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Staff Report Describing the Statutory Mission and Potential Organization of the Delta Stewardship Council

Summary: This report is a background briefing for Council members on the mission and organization of the Council.

Background

Senate Bill X7 1 established statutory authority for the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy. In addition, the bill amends key provisions governing the organization and operations of the Delta Protection Commission and establishes the Sacramento-San Joaquin Delta Reform Act of 2009 that specifies numerous policy goals for achieving the coequal goals of water supply reliability and ecosystem restoration.

This report outlines the key directives in SBX7 1 with respect to Council operations and mission.

Delta Policy (Water Code §85020 et seq.)

- Establishes the coequal goals as the foundation for state decisions on Delta management.
- Establishes state policy of reducing reliance on the Delta to meet future water supply needs through a statewide strategy of investing in improved regional supplies and conservation.
- States certain fundamental goals for managing land use in the Delta.
- Cites the longstanding constitutional principle of reasonable use and the public trust doctrine as the foundation for state water management policy.
- Preserves procedural and legal protections under water rights law and maintains the scope of State Water Resources Control Board (SWRCB) and court jurisdictions.
- Declares that specified statutes and legal doctrines are unaffected by these provisions, including area-of-origin protections, water rights and public trust doctrine.

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Early Actions

- The Council, the Department of Water Resources (DWR), and the Department of Fish & Game (DFG) are required to take certain early (or immediate) actions. The Council is charged with appointing the Delta Independent Science Board (Water Code §85080), developing a strategy to engage the federal government in Delta management decisions (WC §85082), and developing an interim plan for early actions and programs (WC §85084).
- DFG is required to make recommendations to the SWRCB for instream flow needs in the Delta (WC §85084.5).
- DWR is required to initiate specified Delta near-term ecosystem restoration projects, including the Two-Gates Fish Protection Demonstration Project (WC §85085).
- SWRCB is required to establish a system for collecting Delta watershed diversion data and to develop new flow criteria for the Delta ecosystem in order to facilitate planning in the Delta Plan and the Bay Delta Conservation Plan. The process and substance of development of the flow criteria is specified. SWRCB is required to enter an agreement with SWP/CVP contractors to pay costs of developing the flow criteria (WC §85086).
- SWRCB approval would be required for any change in State Water Project (SWP) and Central Valley Project (CVP) points of diversion and must include appropriate flow criteria (WC §85086(c)(2)).
- SWRCB is required to submit flow criteria to Council for information purposes (WC §85086(e)).
- SWRCB is required to submit priority schedule and costs for instream flow studies for the Delta and other high priority streams, with completion required by specified dates (WC §85087).
- DWR is prohibited from commencing construction of any new Delta diversion, conveyance or other facility requiring a change in the point of diversion until SWRCB issues an order approving a change in the point of diversion and SWP/CVP contractors execute a contract to pay the costs for environmental review, planning, design, construction, and mitigation for the construction, operation, and maintenance of any new facility, including mitigation of property tax or assessments levied by local agencies for land used in such construction (WC §85089).

Council Authorities Cited in SBX7 1

<u>Delta Protection Commission:</u> The Council is required to review the economic sustainability plan adopted by the Delta Protection Commission within 180 days of its adoption by the Commission. The deadline for adoption of the plan is July 1, 2011

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(Public Resources Code §29761.5(b)). In addition, if the Commission reviews and makes recommendations on any significant project within the scope of the Delta Plan and then provides comments to the Council, the Council shall consider the recommendations and may adopt the recommendations if they are feasible and consistent with the plan (PRC §29773(b)).

<u>Delta Land Use:</u> The Council is required to be guided by specified findings, policies, and goals when reviewing covered actions of state and local agencies for consistency with the Delta Plan (WC §85022).

<u>California Bay-Delta Authority:</u> All statutes that established the Authority are repealed. The Council is the successor to the Authority and assumes all of its administrative rights and duties, the management of all contracts and grants, and possession and control of all Authority records in force before December 31, 2009. In addition, the Council is to manage the former CALFED Science Program as the Delta Science Program (WC §85034).

<u>Proposition 50 (Chapter 7):</u> Funding for the CALFED Bay-Delta Program under the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 is nearly exhausted. In the meantime, the Council has oversight responsibilities for water storage and conveyance, levee restoration, ecosystem restoration, watershed, and water conservation programs funded under the Act. (WC §85034(e)).

<u>Delta Plan Coordination:</u> The Council is required to establish a committee of agencies responsible for implementing the Delta Plan (WC §85204).

<u>Consistency of Government Agency Actions:</u> The Council is required to develop early consultation procedures for evaluating certifications of consistency for proposed covered actions to ensure they are consistent with the Plan (WC §85225.5).

<u>Appeal of Consistency Determinations:</u> The Council may hear an appeal to a certification of consistency if the Council determines the issue raised is within the Council's jurisdiction and that it raises an appealable issue (WC §85225.10).

<u>Procedures for Appeals:</u> The Council shall adopt appeal procedures and regulations that are exempt from Office of Administrative Law review and approval (WC §85225.30).

<u>Delta Watermaster:</u> The Council is to be consulted with respect to the appointment of the watermaster by the SWRCB. The watermaster is required to submit regular reports to the Council and the Board (WC §85230).

<u>Delta Science Program:</u> Following consultation with the Delta Independent Science Board, the Council shall appoint a lead scientist (WC §85280(b)).

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<u>Delta Plan:</u> The Council shall develop and implement a Delta Plan that furthers the coequal goals (WC §85300 et.seq.).

Council Authorities – Other

<u>Proposition 1E (Article 4):</u> The Council is required to approve any Delta emergency preparedness project or program proposed by DWR (WC §83002(a)(1)).

<u>Proposition 84 (Chapter 2):</u> The Department of Water Resources (DWR) is required to consult with the Council in developing grant evaluation guidelines for funds available for integrated regional water management planning. (WC §10541(c)).

<u>Water Management Projects:</u> The Council is required to include preferences for regional projects and programs in any grant criteria developed for funding water management projects under the provisions of Proposition 204 (1996), Proposition 13 (2000), and Proposition 50 (2002). (WC §10544).

<u>Urban Water Management Grants:</u> The Council may not make any grant or loan to an urban water supplier unless the supplier has adopted a water management plan. DWR shall establish grant and loan eligibility requirements in consultation with the Council (WC §10631.5).

<u>Foundation Documents:</u> The CALFED Record of Decision (2000) and the Delta Vision Strategic Plan (2008) are recognized as the foundation documents underlying Delta policy and informing the mission and duties of the Council.

Council Organization and Staffing

<u>Executive Officer:</u> The Council shall appoint the executive officer and the executive officer shall hire and manage employees as necessary (WC §85201).

<u>Exempt Positions</u>: One exempt position is carried over from the CALFED Program. In addition, all seven Council member positions are exempt positions.

Council Budget

<u>CALFED Bay-Delta Program:</u> All staff and funding for the Program are transferred to the Council. The status and rights of all civil service employees are not affected and they are to be retained (WC §85034(e)).

<u>FY 2010-2011 Proposed Budget:</u> Current year funding for the Council uses funds appropriated for the FY09 CALFED program budget. The FY10 budget proposes 54 permanent staff and four temporary positions funded by the General Fund, special funds, and bond funds.

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List of Attachments

Attachment 1 - Text of SBX7 1

Attachment 2 – Executive Management Personnel

Attachment 3 – Interim Organization Chart

Attachment 4 – Grant Agreements and Contracts

Phone: (916) 445-4500

Attachment 5 – FY 09-10 Budget

Contacts

Joe Grindstaff
Interim Executive Officer

Senate Bill No. 1

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An act to amend Sections 29702, 29725, 29727, 29733, 29735, 29735.1, 29738, 29741, 29751, 29752, 29754, 29756.5, 29763, 29771, and 29780 of, to add Sections 29703.5, 29722.5, 29722.7, 29728.5, 29759, 29773, 29773.5, and 29778.5 to, to add Division 22.3 (commencing with Section 32300) to, to repeal Section 29762 of, and to repeal and add Sections 29736, 29739, 29753, 29761, 29761.5, and 29764 of, the Public Resources Code, and to add Division 35 (commencing with Section 85000) to, and to repeal Division 26.4 (commencing with Section 79400) of, the Water Code, relating to public resources, and making an appropriation therefor.

[Approved by Governor November 12, 2009. Filed with Secretary of State November 12, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1, Simitian. Public resources.

(1) Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 (Delta Protection Act) creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta (Delta).

This bill would revise and recast the provisions of the Delta Protection Act to, among other things, reduce the number of commission members from 23 to 15 members, as specified. The bill would require the commission to appoint at least one advisory committee consisting of representatives from specified entities to provide input regarding the diverse interests within the Delta. The bill would require the commission to adopt, not later than July 1, 2011, an economic sustainability plan containing specified elements and would require the commission to review and, as determined to be necessary, amend the plan every 5 years.

The bill would require the commission to prepare and submit to the Legislature, by July 1, 2010, recommendations on the potential expansion of or change to the primary zone or the Delta.

The bill would establish the Delta Investment Fund in the State Treasury. Moneys in the fund, upon appropriation by the Legislature, would be required to be expended by the commission to implement the regional economic sustainability plan.

The bill would establish in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy. The conservancy would be required to act as a primary state agency to implement ecosystem restoration

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in the Delta and to support efforts that advance environmental protection and the economic well-being of Delta residents. The bill would specify the composition of the conservancy and grant certain authority to the conservancy, including the authority to acquire real property interests from willing sellers or transferors. The conservancy would be required to use conservation easements to accomplish ecosystem restoration whenever feasible. The conservancy would be required to prepare and adopt a strategic plan to achieve the goals of the conservancy. The strategic plan would be required to be consistent with certain plans. The bill would establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, to finance projects, including ecosystem restoration and economic sustainability projects.

(2) Existing law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, recommendations for implementing a specified strategic plan relating to the sustainable management of the Delta.

This bill would enact the Sacramento-San Joaquin Delta Reform Act of 2009. The bill would establish the Delta Stewardship Council as an independent agency of the state. The council would be required to consist of 7 members appointed in a specified manner. The bill would specify the powers of the council. The bill would require the council, on or before January 1, 2012, to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan), meeting specified requirements. The bill would require a state or local public agency that proposes to undertake certain proposed actions that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. By imposing these requirements on a local public agency, the bill would impose a state-mandated local program. The bill would establish an appeal process by which a person may claim that a proposed action is inconsistent with the Delta Plan, as prescribed.

The bill would impose requirements on the Department of Water Resources in connection with the preparation of a specified Bay Delta Conservation Plan (BDCP). The BDCP would only be permitted to be incorporated in the Delta Plan if certain requirements are met.

The bill would establish the Delta Independent Science Board, whose members would be appointed by the council. The bill would require the Delta Independent Science Board to develop a scientific program relating to the management of the Delta.

The bill would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified. The board would be required to submit those determinations to the council. The bill would require the board, in consultation with the council, to appoint

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a special master for the Delta, referred to as the Delta Watermaster. The bill would grant specified authority to the Delta Watermaster.

(3) The California Bay-Delta Authority Act establishes the California Bay-Delta Authority in the Resources Agency. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would repeal that act. The bill would impose requirements on the council in connection with the repeal of that act.

(4) Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of \$5,388,000,000, of which \$1,000,000,000 is made available to the Department of Water Resources, upon appropriation therefor, to meet the long term water needs of the state. Eligible projects are required to implement integrated regional water management plans and include fisheries restoration and protection projects. A portion of these funds may be expended directly or granted by the department to address multiregional needs or issues of statewide significance.

This bill would appropriate \$28,000,000 of these funds to the department for the department to expend, as specified, on the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The bill would make a statement of legislative intent to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond Act of 2006.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would take effect only if SB 6 and SB 7 of the 2009–10 7th Extraordinary Session of the Legislature are enacted and become effective. Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 29702 of the Public Resources Code is amended to read:

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29702. The Legislature further finds and declares that the basic goals of the state for the Delta are the following:

- (a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.
- (b) Protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities.
- (c) Ensure orderly, balanced conservation and development of Delta land resources.
- (d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.
 - SEC. 2. Section 29703.5 is added to the Public Resources Code, to read: 29703.5. The Legislature further finds and declares both of the following:
- (a) The Delta Protection Commission created pursuant to Section 29735 provides an existing forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta. As such, the commission is the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Delta Stewardship Council develops and implements the Delta Plan.
- (b) There is a need for the five Delta counties to establish and implement a resources management plan for the Delta and for the Delta Stewardship Council to consider that plan and recommendations of the commission in the adoption of the Delta Plan.
- SEC. 3. Section 29722.5 is added to the Public Resources Code, to read: 29722.5. "Delta Plan" means the plan adopted by the Delta Stewardship Council pursuant to Section 85300 of the Water Code.
- SEC. 4. Section 29722.7 is added to the Public Resources Code, to read: 29722.7. "Economic sustainability plan" means the plan adopted by the commission pursuant to Section 29759.
- SEC. 5. Section 29725 of the Public Resources Code is amended to read: 29725. "Local government" means the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, and the Cities of Sacramento, Stockton, Tracy, Antioch, Pittsburg, Osladin, Lathrop, Brentwood, West Sacramento, and Oakley, and any other cities that may be incorporated in the future in the primary zone.
- SEC. 6. Section 29727 of the Public Resources Code is amended to read: 29727. "Port" means the Port of Sacramento and the Port of Stockton, including all the land owned or leased by those ports, or potential sites identified in the Delta county general plans as of January 1, 2010, and otherwise authorized by law.
 - SEC. 7. Section 29728.5 is added to the Public Resources Code, to read:

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- 29728.5. "Resources management plan" means the plan adopted by the commission pursuant to Section 29760.
- SEC. 8. Section 29733 of the Public Resources Code is amended to read: 29733. "Unincorporated towns" means the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke, Knightsen, Collinsville, and Ryde.
- SEC. 9. Section 29735 of the Public Resources Code is amended to read: 29735. There is hereby created the Delta Protection Commission consisting of 15 members as follows:
- (a) One member of the board of supervisors, or his or her designee, of each of the five counties within the Delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of each of those respective counties.
- (b) (1) Two elected city council members shall be selected and appointed by city selection committees, from the appropriate regions specified in subparagraphs (A) and (B), one in each of the following areas:
 - (A) One from the south Delta, consisting of the County of San Joaquin.
- (B) One from the west Delta, from either the County of Contra Costa or the County of Solano, on a rotating basis.
- (2) One elected city council member shall be selected and appointed by city selection committees, from regional and area councils of government from the north Delta, consisting of the Counties of Yolo and Sacramento.
- (3) A city council member appointed pursuant to this subdivision may select a designee for purposes of this subdivision.
- (4) Notwithstanding Section 29736, the term of office of the members selected pursuant to this subdivision shall be two years.
- (c) One member each from the board of directors of three different reclamation districts that are located within the primary zone who are residents of the Delta, and who are elected by the trustees of reclamation districts pursuant to paragraphs (1), (2), and (3). Each reclamation district may nominate one director to be a member. The member from an area described in paragraph (1), (2), or (3) shall be selected from among the nominees by a majority vote of the reclamation districts in that area. A member selected pursuant to this subdivision may select a designee for this purpose. For the purposes of this section, each reclamation district shall have one vote. Reclamation district members shall consist of the following:
- (1) One member from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973).
- (2) One member from an area including the west Delta consisting of the area of Contra Costa County within the Delta and within the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).
- (3) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

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- (d) The Secretary of Food and Agriculture, or the secretary's sole designee.
- (e) The executive officer of the State Lands Commission, or the executive officer's sole designee.
- (f) The Secretary of the Natural Resources Agency, or his or her sole designee.
- (g) The Secretary of Business, Transportation and Housing, or his or her sole designee.
- SEC. 10. Section 29735.1 of the Public Resources Code is amended to read:
- 29735.1. (a) A member of the commission described in subdivision (a) of Section 29735 may, subject to the confirmation of his or her appointing power, appoint an alternate to represent him or her at a commission meeting. An alternate may serve prior to confirmation for a period not to exceed 90 days from the date of appointment, unless and until confirmation is denied.
- (b) The alternate shall serve at the pleasure of the member who appoints him or her and shall have all of the powers and duties of a member of the commission, except that the alternate shall only participate and vote in a meeting in the absence of the member who appoints him or her. All provisions of law relating to conflicts of interest that are applicable to a member shall apply to an alternate. If a member has, or is known to have, a conflict of interest on any matter, the member's alternate is ineligible to vote on that matter.
 - SEC. 11. Section 29736 of the Public Resources Code is repealed.
- SEC. 12. Section 29736 is added to the Public Resources Code, to read: 29736. The appointed members of the commission shall serve at the pleasure of their appointing entities.
- SEC. 13. Section 29738 of the Public Resources Code is amended to read:
- 29738. The office of an appointed member of the commission is vacated upon the loss of any qualification required for appointment, and in that event the appointing authority shall appoint a successor within 30 days of the occurrence of the vacancy.
 - SEC. 14. Section 29739 of the Public Resources Code is repealed.
- SEC. 15. Section 29739 is added to the Public Resources Code, to read: 29739. (a) The commission, during the first meeting of the commission after January 1, 2010, shall elect from among the members identified in subdivision (a) of Section 29735 a chairperson who shall serve for one year.
- (b) Subsequent chairpersons shall serve for two years and shall be elected from among the members identified in subdivision (a) of Section 29735.
- (c) The chairperson shall serve as a voting member of the Delta Stewardship Council.
- SEC. 16. Section 29741 of the Public Resources Code is amended to read:
- 29741. The time and place of the first meeting of the commission, on and after January 1, 2010, shall be prescribed by the Governor, but in no

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event shall it be scheduled for a date later than January 31, 2010. All meetings after the first meeting shall be held in a city within the Delta.

- SEC. 17. Section 29751 of the Public Resources Code is amended to read:
- 29751. A majority of the voting members of the commission shall constitute a quorum for the transaction of the business of the commission. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.
- SEC. 18. Section 29752 of the Public Resources Code is amended to read:
- 29752. The commission shall adopt its own rules, regulations, and procedures necessary for its organization and operation, and shall conduct its meetings in compliance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).
 - SEC. 19. Section 29753 of the Public Resources Code is repealed.
- SEC. 20. Section 29753 is added to the Public Resources Code, to read: 29753. (a) The commission shall appoint at least one advisory committee to provide recommendations regarding the diverse interests within the Delta. At a minimum, the advisory committees shall include representatives of state agencies and other stakeholders with interests in the Delta's ecosystem, water supply, and socioeconomic sustainability, including, but not limited to, its recreational, agricultural, flood control, environmental, and water resources, and state, local, and utility infrastructure. The commission shall encourage participation of various federal agencies, including the United States Bureau of Reclamation, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, and others as appropriate.
- (b) The commission may appoint committees from its membership or may appoint additional advisory committees from members of other interested public agencies and private groups.
- (c) The commission shall seek advice and recommendations from advisory committees appointed by local government that are involved in subject matters affecting the Delta.
- SEC. 21. Section 29754 of the Public Resources Code is amended to read:
- 29754. The commission shall establish and maintain an office within the Delta or the City of Rio Vista, and for this purpose the commission may rent or own property and equipment. Any rule, regulation, procedure, plan, or other record of the commission which is of such a nature as to constitute a public record under state law shall be available for inspection and copying pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).
- SEC. 22. Section 29756.5 of the Public Resources Code is amended to read:
- 29756.5. The commission may act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs

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located within the primary zone of the Delta, including, but not limited to, a national heritage area designation in the Delta.

- SEC. 23. Section 29759 is added to the Public Resources Code, to read: 29759. (a) Not later than July 1, 2011, the commission shall prepare and adopt, by a majority vote of the membership of the commission, an economic sustainability plan. The economic sustainability plan shall include information and recommendations that inform the Delta Stewardship Council's policies regarding the socioeconomic sustainability of the Delta region.
- (b) The economic sustainability plan shall include, but not be limited to, all of the following:
- (1) Public safety recommendations, such as flood protection recommendations.
- (2) The economic goals, policies, and objectives in local general plans and other local economic efforts, including recommendations on continued socioeconomic sustainability of agriculture and its infrastructure and legacy communities in the Delta.
- (3) Comments and recommendations to the Department of Water Resources concerning its periodic update of the flood management plan for the Delta.
- (4) Identification of ways to encourage recreational investment along the key river corridors, as appropriate.
 - SEC. 24. Section 29761 of the Public Resources Code is repealed.
 - SEC. 25. Section 29761 is added to the Public Resources Code, to read:
- 29761. The commission shall adopt, by a majority vote, the economic sustainability plan and each plan update after at least three public hearings, with at least one hearing held in a community in the north Delta, one hearing in the south Delta, and one hearing in the west Delta.
 - SEC. 26. Section 29761.5 of the Public Resources Code is repealed.
- SEC. 27. Section 29761.5 is added to the Public Resources Code, to read:
- 29761.5. (a) The commission shall review, and, as determined to be necessary, amend the economic sustainability plan every five years on or before December 31 in years ending in six or one.
- (b) The commission shall transmit copies of the economic sustainability plan and any subsequent amendments to the Governor, Legislature, each local government as defined in Section 29725, and Delta Stewardship Council within 60 days of adoption or amendment. Within 180 days of the commission's adoption or amendment of the economic sustainability plan, the Delta Stewardship Council shall review the economic sustainability plan for consistency with the Delta Plan.
 - SEC. 28. Section 29762 of the Public Resources Code is repealed.
- SEC. 29. Section 29763 of the Public Resources Code is amended to read:
- 29763. Within 180 days from the date of the adoption of the resources management plan or any amendments, changes, or updates, to the resources management plan by the commission, each local government shall submit

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to the commission proposed amendments to its general plan that are intended to make the general plan consistent with the resources management plan with respect to land located within the primary zone.

- SEC. 30. Section 29764 of the Public Resources Code is repealed.
- SEC. 31. Section 29764 is added to the Public Resources Code, to read: 29764. Land use authority granted to the commission by this division is limited to the primary zone, and shall not preempt local government general plans for lands within the secondary zone.
- SEC. 32. Section 29771 of the Public Resources Code is amended to read:
- 29771. After a hearing on an appealed action pursuant to Section 29770, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency shall modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resources management plan, the approved portions of local government general plans that implement the resources management plan, and this division.
- SEC. 33. Section 29773 is added to the Public Resources Code, to read: 29773. (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:
- (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.
- (2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
- (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.
- (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.
- (b) The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.
- SEC. 34. Section 29773.5 is added to the Public Resources Code, to read:
- 29773.5. On or before July 1, 2010, the commission shall prepare and submit to the Legislature recommendations regarding the potential expansion

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of or change to the primary zone or the Delta. The commission shall consider recommendations on the status of all of the following areas:

- (a) Rio Vista.
- (b) Isleton.
- (c) Bethel Island.
- (d) Brannan-Andrus Island.
- (e) Cosumnes/Mokelumne floodway.
- (f) The San Joaquin/South Delta lowlands.
- SEC. 35. Section 29778.5 is added to the Public Resources Code, to read:
- 29778.5. The Delta Investment Fund is hereby created in the State Treasury. Any funds within the Delta Investment Fund shall be available, upon appropriation by the Legislature, to the commission for the implementation of the regional economic sustainability plan, developed pursuant to Section 29759, for the purposes of enhancing Delta communities. The Delta Investment Fund may receive funds from federal, state, local, and private sources.
- SEC. 36. Section 29780 of the Public Resources Code is amended to read:
- 29780. On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but need not be limited to, all of the following:
- (a) An evaluation of the effectiveness of the commission in undertaking its functions prescribed in this division, including, but not limited to, its mandates as follows:
- (1) Determining the consistency of local general plans with the Delta Plan.
- (2) Outcomes of appealed local land use decisions pursuant to Sections 29770 and 29771.
 - (3) Outcomes of reviews initiated by the commission.
 - (4) Facilitating regional economic sustainability.
- (5) Supporting other regional activities for the enhancement of Delta communities.
- (b) An update of the economic sustainability plan, using baseline conditions set forth in the original economic sustainability plan.
- (c) The status of the environmental thresholds established by the commission in the original resource management plan.
- SEC. 37. Division 22.3 (commencing with Section 32300) is added to the Public Resources Code, to read:

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DIVISION 22.3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

32300. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Conservancy Act.

32301. The Legislature finds and declares all of the following:

- (a) The Sacramento-San Joaquin Delta is a unique natural resource of local, state, and national significance.
- (b) At 1,300 square miles, the Delta is the largest estuary on the west coast of North and South America.
- (c) Its rivers and labyrinths of sloughs and channels are home to 750 species of plants and wildlife as well as 55 species of fish, provide habitat for 700 native plant and animal species, and are part of the Pacific Flyway.
- (d) The Delta contains more than 500,000 acres of agricultural land, with unique soils, and farmers who are creative and utilize innovative agriculture, such as carbon sequestration crops, subsidence reversal crops, wildlife-friendly crops, and crops direct for marketing to the large urban populations nearby.
- (e) The Delta and Suisun Marsh provide numerous opportunities for recreation, such as boating, kayaking, fishing, hiking, birding, and hunting. Navigable waterways in the Delta are available for public access and currently make up the majority of recreational opportunities. There is a need for land-based recreational access points including parks, picnic areas, and campgrounds.
- (f) The Delta's history is rich with a distinct natural, agricultural, and cultural heritage. It is home to the community of Locke, the only town in the United States built primarily by early Chinese immigrants. Other legacy communities include Bethel Island, Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio Vista, Ryde, and Walnut Grove.
- (g) The Delta is home to more than 500,000 people and 200,000 jobs, and contributes over thirty-five billion dollars (\$35,000,000,000) to the state's economy.
- (h) In addition, the Delta provides water to more than 25 million Californians and three million acres of agricultural land. It supports a four hundred billion dollar (\$400,000,000,000) economy and is traversed by energy, communications, and transportation facilities vital to the economic health of California.
- (i) A Sacramento-San Joaquin Delta Conservancy can support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner, including all of the following:
 - (1) Protect and enhance habitat and habitat restoration.
 - (2) Protect and preserve Delta agriculture and working landscapes.
 - (3) Provide increased opportunities for tourism and recreation.

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- (4) Promote Delta legacy communities and economic vitality in the Delta in coordination with the Delta Protection Commission.
- (5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.
 - (6) Protect and improve water quality.
- (7) Assist the Delta regional economy through the operation of the conservancy's program.
 - (8) Identify priority projects and initiatives for which funding is needed.
- (9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.
- (10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).
- (11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.
 - (12) Promote environmental education.

Chapter 2. Definitions

- 32310. For the purposes of this division, the following terms have the following meanings:
- (a) "Board" means the governing board of the Sacramento-San Joaquin Delta Conservancy.
- (b) "Conservancy" means the Sacramento-San Joaquin Delta Conservancy.
- (c) "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code.
- (d) "Fund" means the Sacramento-San Joaquin Delta Conservancy Fund created pursuant to Section 32360.
- (e) "Local public agency" means a city, county, special district, or joint powers authority.
- (f) "Nonprofit organization" means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of Title 26 of the United States Code and that has among its principal charitable purposes preservation of land for scientific, recreational, scenic, or open-space opportunities, protection of the natural environment, preservation or enhancement of wildlife, preservation of cultural and historical resources, or efforts to provide for the enjoyment of public lands.
- (g) "Suisun Marsh" means the area defined in Section 29101 and protected by Division 19 (commencing with Section 29000).

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CHAPTER 3. SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY

- 32320. There is in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy, which is created as a state agency to work in collaboration and cooperation with local governments and interested parties.
- 32322. (a) The conservancy shall act as a primary state agency to implement ecosystem restoration in the Delta.
- (b) The conservancy shall support efforts that advance environmental protection and the economic well-being of Delta residents, including all of the following:
 - (1) Protect and enhance habitat and habitat restoration.
 - (2) Protect and preserve Delta agriculture and working landscapes.
- (3) Provide increased opportunities for tourism and recreation in the Delta.
- (4) Promote Delta legacy communities and economic vitality in the Delta, in coordination with the Delta Protection Commission.
- (5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.
 - (6) Protect and improve water quality.
- (7) Assist the Delta regional economy through the operation of the conservancy's program.
 - (8) Identify priority projects and initiatives for which funding is needed.
- (9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.
- (10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).
- (11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.
 - (12) Promote environmental education through grant funding.
- (c) When implementing subdivision (b), the conservancy shall undertake efforts to enhance public use and enjoyment of lands owned by the public.

CHAPTER 4. GOVERNING BOARD

- 32330. The board shall consist of 11 voting members and two nonvoting members, appointed or designated as follows:
- (a) The 11 voting members of the board shall consist of all of the following:
 - (1) The Secretary of the Natural Resources Agency, or his or her designee.

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- (2) The Director of Finance, or his or her designee.
- (3) One member of the board or a designee who is appointed by the Contra Costa County Board of Supervisors, who is a resident of that county.
- (4) One member of the board or a designee who is appointed by the Sacramento County Board of Supervisors, who is a resident of that county.
- (5) One member of the board or a designee who is appointed by the San Joaquin County Board of Supervisors, who is a resident of that county.
- (6) One member of the board or a designee who is appointed by the Solano County Board of Supervisors, who is a resident of that county.
- (7) One member of the board or a designee who is appointed by the Yolo County Board of Supervisors, who is a resident of that county.
- (8) Two public members appointed by the Governor, subject to confirmation by the Senate.
 - (9) One public member appointed by the Senate Committee on Rules.
 - (10) One public member appointed by the Speaker of the Assembly.
- (b) The two nonvoting members shall consist of a Member of the Senate, appointed by the Senate Committee on Rules, and a Member of the Assembly, appointed by the Speaker of the Assembly. The members appointed under this subdivision shall meet with the conservancy and participate in its activities to the extent that this participation is not incompatible with their positions as Members of the Legislature. The appointed members shall represent a district that encompasses a portion of the Delta.
- (c) Ten liaison advisers who shall serve in an advisory, nonvoting capacity shall consist of all of the following:
- (1) One representative of the United States Fish and Wildlife Service, designated by the United States Secretary of the Interior.
- (2) One representative of the United States National Marine Fisheries Service, designated by the United States Secretary of the Interior.
- (3) One representative of the United States Bureau of Reclamation, designated by the United States Secretary of the Interior.
- (4) One representative of the United States Army Corps of Engineers, designated by the Commanding Officer, United States Army Corps of Engineers, South Pacific Division.
- (5) A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.
- (6) A designee of the State Coastal Conservancy for coordination purposes.
- (7) A designee of the Suisun Resource Conservation District for coordination purposes.
 - (8) A designee of the Central Valley Flood Protection Board.
 - (9) A designee of the Yolo Basin Foundation.
 - (10) A designee of the Delta Protection Commission.
- (d) The public members appointed by the Governor shall serve for a term of four years, with a two-term limit.
- (e) The locally appointed members and alternates shall serve at the pleasure of the appointing board of supervisors.

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- (f) The public members appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve for a term of four years, with a two-term limit.
- (g) The Members of the Senate and Assembly shall serve at the pleasure of the appointing body.
 - (h) Alternates may be appointed by the county boards of supervisors.
- 32332. Annually, the voting members of the board shall elect from among the voting members a chairperson and vice chairperson, and other officers as necessary. If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson shall be elected by the voting members of the board to serve for the remainder of the term. The chairperson shall be selected from among the members specified in paragraphs (3) to (7), inclusive, of subdivision (a) of Section 32330.
- 32334. A majority of the voting members shall constitute a quorum for the transaction of the business of the conservancy. The board shall not transact the business of the conservancy if a quorum is not present at the time a vote is taken. A decision of the board requires an affirmative vote of six of the voting membership, and the vote is binding with respect to all matters acted on by the conservancy.
- 32336. The board shall adopt rules and procedures for the conduct of business by the conservancy.
- 32338. The board may establish advisory boards or committees, hold community meetings, and engage in public outreach.
- 32340. The board shall establish and maintain a headquarters office within the Delta. The conservancy may rent or own real and personal property and equipment pursuant to applicable statutes and regulations.
- 32342. The board shall determine the qualifications of, and shall appoint, an executive officer of the conservancy, who shall be exempt from civil service. The board shall employ other staff as necessary to execute the powers and functions provided for in this division.
- 32344. The board may enter into contracts with private entities and public agencies to procure consulting and other services necessary to achieve the purposes of this division.
- 32346. The conservancy's expenses for support and administration may be paid from the conservancy's operating budget and any other funding sources available to the conservancy.
- 32348. The board shall conduct business in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).
- 32350. The board shall hold its regular meetings within the Delta or the City of Rio Vista.

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Chapter 5. Powers, Duties, and Limitations

- 32360. (a) Except as specified in Section 32360.5, the jurisdiction and activities of the conservancy are limited to the Delta and Suisun Marsh.
- (b) (1) The Sacramento-San Joaquin Delta Conservancy Fund is hereby created in the State Treasury. Moneys in the fund shall be available, upon appropriation by the Legislature, only for the purposes of this division.
- (2) Funds provided for ecosystem restoration and enhancement shall be available for ecosystem restoration projects consistent with the conservancy's strategic plan adopted pursuant to Section 32376.
- (3) Funds may be allocated to a separate program within the conservancy for economic sustainability in the Delta. The economic sustainability plan adopted pursuant to Section 29759 shall be the basis for the program. Funds provided to the conservancy to implement ecosystem restoration projects pursuant to the Bay Delta Conservation Plan shall only be used for ecosystem restoration purposes.
- 32360.5. In furtherance of the conservancy's role in implementing the Delta Plan, the conservancy may take or fund an action outside the Delta and Suisun Marsh if the board makes all of the following findings:
 - (a) The project implements the ecosystem goals of the Delta Plan.
- (b) The project is consistent with the requirements of any applicable state and federal permits.
- (c) The conservancy has given notice to and reviewed any comments received from affected local jurisdictions and the Delta Protection Commission.
- (d) The conservancy has given notice to and reviewed any comments received from any state conservancy where the project is located.
 - (e) The project will provide significant benefits to the Delta.
- 32362. The conservancy may engage in partnerships with nonprofit organizations, local public agencies, and landowners.
- 32363. In implementing this division, the conservancy shall cooperate and consult with the city or county in which a grant is proposed to be expended or an interest in real property is proposed to be acquired, and shall, as necessary or appropriate, coordinate its efforts with other state agencies, in cooperation with the Secretary of the Natural Resources Agency. The conservancy shall, as necessary or appropriate, cooperate and consult with a public water system, levee, flood control, or drainage agency that owns or operates facilities, including lands appurtenant thereto, where a grant is proposed to be expended or an interest in land is proposed to be acquired.
- 32364. (a) The conservancy may require a grantee to enter into an agreement with the conservancy on terms and conditions specified by the conservancy.
- (b) The conservancy may require a cost-share or local funding requirement for a grant. The conservancy may make that cost-share or local funding requirement contingent upon the total amount of funding available,

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the fiscal resources of the applicant, or urgency of the project. The conservancy may waive cost-share requirements.

- (c) The conservancy may fund or award grants for plans and feasibility studies consistent with its strategic plan or the Delta Plan.
- (d) The conservancy may seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. The proceeds of repayment shall be deposited in the fund.
- (e) The conservancy may require any funds that exceed the costs of eligible or approved projects or of acquisition to be returned to the conservancy, to be available for expenditure when appropriated by the Legislature.
- 32364.5. (a) The conservancy may provide grants and loans to state agencies, local public agencies, and nonprofit organizations to further the goals of the conservancy.
- (b) An entity applying for a grant from the conservancy to acquire an interest in real property shall specify all of the following in the grant application:
 - (1) The intended use of the property.
 - (2) The manner in which the land will be managed.
- (3) How the cost of ongoing operations, maintenance, and management will be provided, including an analysis of the maintaining entity's financial capacity to support those ongoing costs.
- (4) Grantees shall demonstrate, where applicable, how they will provide payments in lieu of taxes, assessments, or charges otherwise due to local government.
 - 32365. The conservancy may sue and be sued.
- 32366. (a) The conservancy may acquire from willing sellers or transferors interests in real property and improve, lease, or transfer interests in real property, in order to carry out the purposes of this division.
- (b) The conservancy shall use conservation easements to accomplish ecosystem restoration whenever feasible.
- 32368. The conservancy may enter into an agreement with a public agency, nonprofit organization, or private entity for the construction, management, or maintenance of facilities authorized by the conservancy.
 - 32370. The conservancy shall not exercise the power of eminent domain.
- 32372. (a) The conservancy may pursue and accept funds from various sources, including, but not limited to, federal, state, and local funds or grants, gifts, donations, bequests, devises, subventions, grants, rents, royalties, or other assistance and funds from public and private sources.
 - (b) The conservancy may accept fees levied by others.
 - (c) The conservancy may create and manage endowments.
- (d) All funds received by the conservancy shall be deposited in the fund for expenditure for the purposes of this division.
- 32376. Within two years of hiring an executive officer, the board shall prepare and adopt a strategic plan to achieve the goals of the conservancy. The plan shall describe its interaction with local, regional, state, and federal land use, recreation, water and flood management, and habitat conservation

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and protection efforts within and adjacent to the Delta. The strategic plan shall establish priorities and criteria for projects and programs, based upon an assessment of program requirements, institutional capabilities, and funding needs throughout the Delta. The strategic plan shall be consistent with the Delta Plan, the Delta Protection Commission's resources management plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act of 1977 (Division 19 (commencing with Section 29000)), and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.

- 32378. (a) The conservancy may expend funds and award grants and loans to facilitate collaborative planning efforts and to develop projects and programs that are designed to further the purposes of this division.
- (b) The conservancy may provide and make available technical information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.
- 32380. The conservancy may acquire water or water rights to support the goals of the conservancy.
- 32381. This division does not grant to the conservancy any of the following:
 - (a) The power of a city or county to regulate land use.
- (b) The power to regulate any activities on land, except as the owner of an interest in the land, or pursuant to an agreement with, or a license or grant of management authority from, the owner of an interest in the land.
 - (c) The power over water rights held by others.
- SEC. 38. Division 26.4 (commencing with Section 79400) of the Water Code is repealed.
- SEC. 39. Division 35 (commencing with Section 85000) is added to the Water Code, to read:

DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009

PART 1. GENERAL PROVISIONS

Chapter 1. Short Title and Legislative Findings

85000. This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

85001. The Legislature finds and declares all of the following:

- (a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.
- (b) In response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the

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Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

85002. The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

85003. The Legislature finds and declares all of the following:

- (a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.
- (b) Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the exercise of associated rights, continue to depend on the landowners' maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair.
- (c) In 1933, the Legislature approved the California Central Valley Project Act, which relied upon the transfer of Sacramento River water south through the Delta and maintenance of a more constant salinity regime by using upstream reservoir releases of freshwater to create a hydraulic salinity barrier. As a result of the operations of state and federal water projects, the natural salinity variations in the Delta have been altered. Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.

85004. The Legislature finds and declares all of the following:

- (a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.
- (b) Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater

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reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

Chapter 2. Delta Policy

- 85020. The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:
- (a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.
- (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.
- (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.
- (d) Promote statewide water conservation, water use efficiency, and sustainable water use.
- (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improve the water conveyance system and expand statewide water storage.
- (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.
- (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.
- 85021. The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.
- 85022. (a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85057.5 be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land use planning and development.
- (b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.
 - (c) The Legislature finds and declares all of the following:
- (1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary and wetland ecosystem of hemispheric importance.

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- (2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation
- (3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent its further deterioration and destruction.
- (4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.
- (d) The fundamental goals for managing land use in the Delta are to do all of the following:
- (1) Protect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environment and its natural and artificial resources.
- (2) Ensure the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state.
- (3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- (4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.
- (5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.
- (6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- 85023. The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

CHAPTER 3. MISCELLANEOUS PROVISIONS

- 85031. (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.
- (b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use outside the Sacramento River hydrologic region or the Delta, shall

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not be deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

- (c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4 of Division 35.
- (d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

85032. This division does not affect any of the following:

- (a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).
- (b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).
 - (c) The Fish and Game Code.
- (d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000).
 - (e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.
- (f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
 - (g) Section 1702.
 - (h) The application of the public trust doctrine.
 - (i) Any water right.
- (j) The liability of the state for flood protection in the Delta or its watershed.
- 85034. (a) (1) The council shall administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority under Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.
- (2) The exercise of the authority described in paragraph (1) is not subject to review or approval by the Department of General Services.
- (3) A contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party is not void or voidable as a result of the implementation of this subdivision, but shall continue in full force and effect until the end of its term.
- (b) The council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of that authority.

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- (c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.
- (d) The council shall assume from the California Bay-Delta Authority all responsibility to manage, in accordance with Chapter 5 (commencing with Section 85280) of Part 3, the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400).
- (e) Consistent with the responsibilities and duties assumed by the council pursuant to this section, all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program are hereby transferred to, and may be expended for the purposes of, the council. The executive officer of the council shall confer with the Director of Fish and Game, the director of the department, and the executive director of the board regarding possible reallocation of the staff and resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

CHAPTER 4. DEFINITIONS

85050. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

85051. "Acquisition" means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

85052. "Adaptive management" means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

85053. "Bay Delta Conservation Plan" or "BDCP" means a multispecies conservation plan.

85054. "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

85055. "Commission" means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

85056. "Conservancy" means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

85057. "Council" means the Delta Stewardship Council established in Section 85200.

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- 85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:
- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
 - (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.
 - (b) "Covered action" does not include any of the following:
 - (1) A regulatory action of a state agency.
- (2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.
- (3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.
- (4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.
- (5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.
- (6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:
- (A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.
- (B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.
- (7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.
- (B) Any project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes

effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

- (C) Subparagraphs (A) and (B) do not apply to either of the following:
- (i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.
- (ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.
- (c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.

85058. "Delta" means the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.

85059. "Delta Plan" means the comprehensive, long-term management plan for the Delta as adopted by the council in accordance with this division.

85060. "Delta watershed" means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department's Bulletin No. 160-05.

85064. "Public water agency" means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

85066. "Restoration" means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

85067. "Strategic Plan" means both the "Delta Vision Strategic Plan" issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the "Delta Vision Implementation Report" adopted by the Delta Vision Committee and dated December 31, 2008.

PART 2. EARLY ACTIONS

85080. The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

85082. The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal

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Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

85084. The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

85084.5. The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

85085. The department shall do all of the following:

- (a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.
 - (b) Evaluate the effectiveness of the Three Mile Slough Barrier project.
- (c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.
- (d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.
- 85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.
- (b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.
- (c) (1) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The public process shall be in the form of an informational proceeding conducted pursuant to Article 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations, and shall provide an opportunity for all interested persons to participate. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

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- (2) Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.
- (3) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions in permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.
- (d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.
- (e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

85087. The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

85088. Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

- 85089. Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following:
- (a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.

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(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

PART 3. DELTA GOVERNANCE

CHAPTER 1. DELTA STEWARDSHIP COUNCIL

- 85200. (a) The Delta Stewardship Council is hereby established as an independent agency of the state.
- (b) (1) The council shall consist of seven voting members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.
- (2) No member of the council shall serve two consecutive terms, but a member may be reappointed after a period of two years following the end of his or her term.
- (c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years.
- (B) The initial terms of two of the four members appointed by the Governor shall be six years.
- (C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.
- (D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.
- (2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson.
- (d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.
- (e) The council members shall select a chairperson from among their members, who shall serve for not more than four years in that capacity.
- (f) The council shall meet once a month in a public forum. At least two meetings each year shall take place at a location within the Delta.
- 85201. (a) The chairperson shall serve full time. Other members shall serve one-third time. The council may select a vice chairperson and other officers determined to be necessary.
- (b) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.
- (c) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

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- (d) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.
- (e) The executive officer shall hire employees necessary to carry out council functions.
- (f) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.
- (g) The salary of each employee of the council shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.
- (h) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.
- 85202. Council members shall possess diverse expertise and reflect a statewide perspective.
 - 85203. The headquarters of the council shall be located in Sacramento.
- 85204. The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

Chapter 2. Mission, Duties, and Responsibilities of the Council

85210. The council has all of the following powers:

- (a) To sue or be sued.
- (b) To enter into contracts.
- (c) To employ the services of public, nonprofit, and private entities.
- (d) To delegate administrative functions to council staff.
- (e) To employ its own legal staff or contract with other state or federal agencies for legal services, or both. The council may employ special legal counsel with the approval of the Attorney General.
- (f) To receive funds, including funds from private and local governmental sources, contributions from public and private sources, as well as state and federal appropriations.
- (g) To disburse funds through grants, public assistance, loans, and contracts.
- (h) To request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.
- (i) To adopt regulations or guidelines as needed to carry out the powers and duties identified in this division.
- (j) To comment on state agency environmental impact reports for projects outside the Delta that the council determines will have a significant impact on the Delta.
- (k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Any hearing by the council may be conducted by any

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member of the council, or other designee, upon authorization of the council, and he or she shall have the powers granted to the council by this section, provided that any final action of the council shall be taken by a majority of the membership of the council at a meeting duly called and held.

85210.5. A majority of the voting members of the council shall constitute a quorum for the transaction of the business of the council. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

85211. The Delta Plan shall include performance measurements that will enable the council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include, but need not be limited to, quantitative or otherwise measurable assessments of the status and trends in all of the following:

- (a) The health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats, and processes, including viable populations of Delta fisheries and other aquatic organisms.
- (b) The reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed.

85212. The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

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CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS

- 85225. A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.
- 85225.5. To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.
- 85225.10. (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.
- (b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.
- (c) The council, or by delegation the executive officer, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.
- 85225.15. The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.
- 85225.20. The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer, determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.
- 85225.25. After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

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85225.30. The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Chapter 4. Delta Watermaster

- 85230. (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be "the Delta Watermaster."
- (b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions. The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's orders and license and permit terms and conditions that apply to conditions in the Delta.
- (c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.
- (d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

Chapter 5. Delta Independent Science Board and Delta Science Program

- 85280. (a) The Delta Independent Science Board is hereby established in state government.
- (1) The Delta Independent Science Board shall consist of no more than 10 members appointed by the council. The term of office for members of the Delta Independent Science Board shall be five years. A member may serve no more than two terms.
- (2) Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program

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or agency subject to the review activities of the Delta Independent Science Board.

- (3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.
- (4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.
- (b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.
 - (1) The lead scientist shall meet all of the following qualifications:
- (A) Hold an advanced degree in a field related to water or ecosystem management.
- (B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.
- (C) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.
- (D) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.
- (2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.
- (3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.
- (4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.
- (c) The Delta Science Program shall function as a replacement for, and successor to, the CALFED Science Program and the Delta Independent Science Board shall replace the CALFED Independent Science Board.

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PART 4. COMPREHENSIVE DELTA PLANNING

CHAPTER 1. THE DELTA PLAN

- 85300. (a) On or before January 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies.
- (b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the council.
- (c) The council shall review the Delta Plan at least once every five years and may revise it as the council deems appropriate. The council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan.
- (d) (1) The council shall develop the Delta Plan consistent with all of the following:
- (A) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.
 - (B) Section 8 of the federal Reclamation Act of 1902.
 - (C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).
- (2) If the council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.
- (e) The council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.
- 85301. (a) The commission shall develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan.
- (b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area.

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- (2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.
- (c) For the purposes of assisting the commission in its preparation of the proposal, both of the following actions shall be undertaken:
- (1) The Department of Parks and Recreation shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the Department of Parks and Recreation.
- (2) The Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.
- (d) The commission shall submit the proposal developed pursuant to subdivision (a) to the council. The council shall consider the proposal and may include any portion of the proposal in the Delta Plan if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division.
- 85302. (a) The implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply.
- (b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.
- (c) The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:
 - (1) Viable populations of native resident and migratory species.
 - (2) Functional corridors for migratory species.
 - (3) Diverse and biologically appropriate habitats and ecosystem processes.
 - (4) Reduced threats and stresses on the Delta ecosystem.
- (5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.
- (d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:
 - (1) Meeting the needs for reasonable and beneficial uses of water.
 - (2) Sustaining the economic vitality of the state.
 - (3) Improving water quality to protect human health and the environment.
- (e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:
- (1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.

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- (2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.
- (3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.
- (4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.
- (5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.
- (6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.
- (f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).
- (g) In carrying out this section, the council shall make use of the best available science.
- (h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.
- 85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.
- 85304. The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.
- 85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.
- (b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.
- 85306. The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.
- 85307. (a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.
 - (b) The Delta Plan may include local plans of flood protection.
- (c) The council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.
- (d) The council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

85308. The Delta Plan shall meet all of the following requirements:

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- (a) Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.
- (b) Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.
- (c) Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.
- (d) Describe the methods by which the council shall measure progress toward achieving the coequal goals.
- (e) Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.
- (f) Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.
- 85309. The department, in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, the department shall consider all related actions set forth in the Strategic Plan.

CHAPTER 2. BAY DELTA CONSERVATION PLAN

- 85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan in accordance with this chapter.
- (b) The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following:
- (1) Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.
- (2) Complies with Division 13 (commencing with Section 21000) of the Public Resources Code, including a comprehensive review and analysis of all of the following:
- (A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.
- (B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

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- (C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.
 - (D) The potential effects on migratory fish and aquatic resources.
- (E) The potential effects on Sacramento River and San Joaquin River flood management.
- (F) The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.
- (G) The potential effects of each Delta conveyance alternative on Delta water quality.
- (c) The department shall consult with the council and the Delta Independent Science Board during the development of the BDCP. The council shall be a responsible agency in the development of the environmental impact report. The Delta Independent Science Board shall review the draft environmental impact report and submit its comments to the council and the Department of Fish and Game.
- (d) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, the council shall have at least one public hearing concerning the incorporation of the BDCP into the Delta Plan.
- (e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.
- (f) The department, in coordination with the Department of Fish and Game, or any successor agencies charged with BDCP implementation, shall report to the council on the implementation of the BDCP at least once a year, including the status of monitoring programs and adaptive management.
- (g) The council may make recommendations to BDCP implementing agencies regarding the implementation of the BDCP. BDCP implementing agencies shall consult with the council on these recommendations. These recommendations shall not change the terms and conditions of the permits issued by state and federal regulatory agencies.
- 85321. The BDCP shall include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.
- 85322. This chapter does not amend, or create any additional legal obligation or cause of action under, Chapter 10 (commencing with Section

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2800) of Division 3 of the Fish and Game Code or Division 13 (commencing with Section 21000) of the Public Resources Code.

CHAPTER 3. OTHER PLANS FOR THE DELTA

85350. The council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

- SEC. 40. (a) Pursuant to Section 75026 of the Public Resources Code, the sum of twenty-eight million dollars (\$28,000,000) is hereby appropriated to the Department of Water Resources for expenditure by that department pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code for the Two-Gates Fish Protection Demonstration Program managed by the United States Bureau of Reclamation. The Department of Water Resources shall expend such funds only consistent with the requirements of Sections 75026 and 75027 of the Public Resources Code.
- (b) It is the intent of the Legislature to finance the activities of the Delta Stewardship Council and the Sacramento-San Joaquin Delta Conservancy from funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).
- SEC. 41. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
- SEC. 42. This act shall take effect only if Senate Bill 6 and Senate Bill 7 of the 2009–10 Seventh Extraordinary Session of the Legislature are enacted and become effective.

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Executive Management Personnel

Joe Grindstaff has been Acting Executive Officer for the Delta Stewardship Council which was created by legislation last fall to achieve the co-equal goals of ecosystem restoration and water supply since February 3, 2010. Previously he had been appointed Deputy Secretary for Water Policy by Natural Resources Secretary Mike Chrisman in 2006, with broad oversight responsibility for all activities related to water, including the CALFED Bay-Delta Program. He was appointed Director of the CALFED Bay-Delta Program in 2006 after serving as acting director for the prior year. Prior to joining CALFED, he served as chief deputy director of the Department of Water Resources and general manager of the Santa Ana Watershed Project Authority. Earlier in his career, he served in leadership roles at other water districts and municipalities.

Keith Coolidge is acting Chief Deputy Executive Officer for the Delta Stewardship Council. He came to Sacramento in 2003 to serve as Deputy Director for Communications for the CALFED Bay-Delta Program, responsible for communications and interagency coordination at the state and federal levels. Over the past two years he also worked with Governor's Delta Vision Blue Ribbon Task Force and the Bay-Delta Conservation Plan. Before moving to Sacramento, Keith was the Associate General Manager of the Municipal Water District of Orange County, from 1990 to 2003, and executive advisor to the Orange County Environmental Management Agency from 1989-90. Keith is a former member of the Board of Directors of the Association of California Water Agencies and a past president of the Independent Special Districts of Orange County. Prior to his work in government, Keith spent 13 years in several editorial and management positions in New York and California for Freedom Newspapers, Inc., lastly as Commentary Editor for *The Orange County Register* in Southern California.

Clifford N. Dahm Ph.D. is an internationally-recognized expert in aquatic ecology, biogeochemistry, climatology and restoration biology. As Lead Scientist, he works with the CALFED Science Program staff, the CALFED Independent Science Board, CALFED implementing agency scientists, and the scientific community at large to promote and coordinate the use of peer-reviewed science throughout the CALFED Program. A professor of biology at the University of New Mexico (UNM), Cliff leads the Hydrogeoecology Research Group at UNM. He has also worked as a science advisor to the South Florida Water Management District, helping guide ecosystem restoration programs on the Kissimmee River, and has served as a peer reviewer for setting flows and levels for healthy rivers in the Tampa Bay area. More recently, Cliff has been involved in water management and drought issues in the Southwest, addressing

ammonia toxicity to fish, setting minimum flows and evaluating storage options. He also has experience managing large granting programs at the National Science Foundation. His current scientific leadership roles include director of the Freshwater Sciences Interdisciplinary Doctoral Program, and co-principal investigator of the Sevilleta Long-Term Ecological Research Program. He recently completed a term as president of the North American Benthological Society, the premier national and international stream and river professional society. He is a member of the Science Steering Group for the Global Water Budget Program of the U.S. Global Change Research Program. Cliff has a PhD in oceanography and aquatic ecology from Oregon State University (OSU) as well as a master's degree in chemical oceanography from OSU and a bachelor's degree in chemistry from Boise State University.

Anke Mueller-Solger, Ph.D. serves the Delta Stewardship Council as Lead Scientist for the Bay-Delta Interagency Ecological Program (IEP). The IEP is a cooperative multi-agency ecological research and monitoring program conducted in the San Francisco Bay-Sacramento/San Joaquin Delta estuary since 1970. The nine current IEP member agencies are the California Department of Water Resources, Department of Fish and Game, and State Water Resources Control Board, and the U.S. Fish and Wildlife Service, Bureau of Reclamation, Geological Survey, Army Corps of Engineers, National Marine Fisheries Service, and Environmental Protection Agency. In her role as IEP Lead Scientist. Dr. Mueller-Solger provides scientific leadership and coordination for the IEP agencies. Closely working with the Delta Science Program, she also works to tie IEP research and monitoring into the larger Bay-Delta scientific program and serves as a science conduit between the Delta Stewardship Council and the IEP agencies. She is the principal communicator of IEP-generated scientific information to the Delta Stewardship Council, the IEP agency Directors, and other policymakers with decision making authority over managing Bay-Delta resources. These efforts are critical to help the IEP meet its mission to provide ecological information and scientific leadership for use in managing the Bay-Delta system. Dr. Mueller-Solger has degrees in biology from Goettingen University in Germany and a Ph.D. in Ecology from UC Davis. Her scientific research focuses on the ecology of lakes, rivers, floodplains and estuaries, and encompasses a variety of organisms, from algae and protists to invertebrates and fish. Dr. Mueller-Solger's involvement with the IEP began in 1998 as a postdoctoral scientist working on a CALFED-funded project on carbon sources and sinks in the upper San Francisco Estuary.

Lauren Hastings, Ph.D. serves as the Deputy Executive Officer for Science, and oversees implementation of the CALFED Science Program, including overall program management and working collaboratively with state and federal agencies, academic institutions, scientific experts and stakeholders to promote sound use of science within the CALFED Program. Prior to managing the

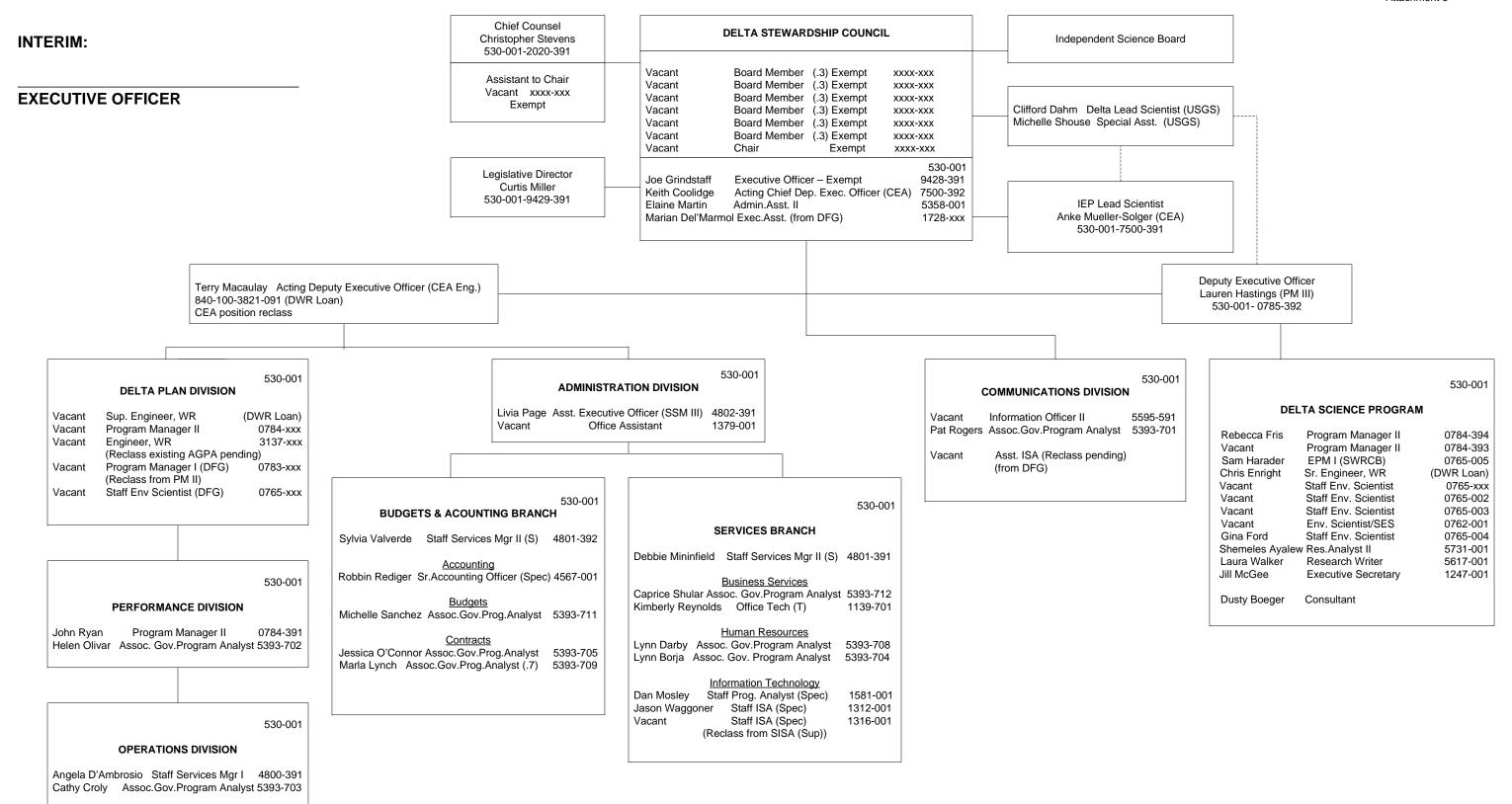
Science Program, Lauren worked for the CALFED Ecosystem Restoration Program (ERP) where she focused on incorporation of science into ERP activities. Lauren's primary interests are communicating scientific information to California Bay-Delta policy and decision makers, promoting science-based adaptive management, and supporting research that will fill critical gaps in our understanding of the Bay-Delta system. Prior to working for CALFED, Lauren worked for the USGS in Sacramento, managing two field research projects evaluating effects of various water and land management strategies on mitigating subsidence of Delta peat soils. Lauren has a PhD and MS in Soil Chemistry from UC Davis, and a BA in biology from Luther College.

Chris Stevens is the Acting Chief Counsel for the newly established Delta Stewardship Council, which was created as part of the 2009 water reform legislative package. Prior to that, Mr. Stevens was Chief Counsel for the CALFED Bay-Delta Program. He has also served as General Counsel for the California Department of Food and Agriculture and as a deputy legislative counsel for the California Legislature. He received his law degree from U.C. Berkeley (Boalt Hall) in 1988.

Curt Miller has been the Assistant Director for Legislation since May, 2007. From 1977 to 1984 he served as the consultant to the Senate Committee on Agriculture and Water Resources. In 1985 he joined the staff of Senator Ken Maddy where he served as the budget and fiscal staff director until 2000. In 2001, Miller was appointed legislative director for the California Bay-Delta Authority where he served until 2004 when he joined the legislative affairs staff at the Department of Water Resources, a post he led until 2007. He served as chairman and director of the Yolo County Flood Control and Water Conservation District from 1980 to 2000 and is a member of Class 5 of the Agricultural Education Foundation. Miller holds a Bachelor of Science degree in Agricultural Economics from the University of California, Davis.

Terry Macaulay, P.E. joined the CALFED Bay Delta Program in December 2007. She currently serves as the acting Deputy Executive Officer for the Delta Stewardship Council as well as the Interim Executive Officer for the Sacramento-San Joaquin Delta Conservancy. She has more than 25 years of experience in natural resources issues and management. She has worked in drinking water utility regulation, residential water treatment devices, drinking water additives and Proposition 50 implementation. She also has environmental engineering experience in hazardous waste management and industrial emissions control. She has a B.S. and professional registration in mechanical engineering.

Livia Page is the Assistant Executive Officer for Administration for the Delta Stewardship Council, formerly the CALFED Bay-Delta Program, including the newly created Conservancy since January 2007. She has more than 25 years of state service experience as an analyst and manager performing administrative services in numerous state departments: State Controller's Office, Health Services, Mental Health, Caltrans, Corrections, Office of Emergency Services, Health and Human Services, and Cal Fire. She has a degree in business administration and recently completed the UC Davis Executive Program. She takes pride in providing quality administrative services to the various state departments over the years, as well as with her current employer.



DELTA STEWARDSHIP COUNCIL AGREEMENT LISTING

(as of 3/25/2010)

GRANTS

Agreement #	Contractor	Project Title	Start Date	End Date	Total
<u> </u>		DELTA SCIENCE PROGRAM			
1035	UC Davis	Quantitative Indicators and Life History Implications of Environmental Stress on Sturgeon	4/15/2007	12/31/2010	\$700,000.00
1036	UC Davis	Predicting the Effects of Invasive Hydrozoa (Jellyfish) on Pelagic Organisms Under Changing Salinity and Temperature Regimes	4/1/2007	12/31/2010	\$430,870.00
1037	San Francisco State University	Climate Change Impacts to San Francisco Bay-Delta Wetlands: Links to Pelagic Food Webs and Predictive Responses Based on Landscape Modeling	4/1/2007	6/30/2011	\$646,848.00
1039	San Francisco State University	Do Low Phytoplankton Growth Rates Signal the "Bad" Habitat Conditions in Suisun Bay Driving the Pelagic Organism Decline?	5/10/2007	4/15/2010	\$838,372.00
1042	Contra Costa Water District	The Consequences of Operational Decisions on Water Quality: Reconciling Delta Smelt, Salmon, and Human Needs	6/1/2007	6/30/2010	\$116,927.00
1047	Dept of Water Resources	Using FlowCam Technology to Measure High Frequency Spatial and Temporal Variation in Phytoplankton and Zooplankton Monitoring Programs	7/1/2007	6/30/2010	\$150,000.00
1048	US Fish and Wildlife	Pilot Mark-Recapture Study II: transgenerational marking of cultured fish	8/20/2007	7/15/2010	\$669,995.00
1049	US Fish and Wildlife	Estimating Juvenile Chinook Salmon Spring and Winter Run Abundance at Chipps Island	9/1/2007	6/30/2011	\$483,904.00
1051	UC Berkeley	A Calibration-Free Approach to Modeling Delta Flows and Transport	7/1/2007	12/31/2010	\$390,869.00
1052	University South Carolina	A Non-Point Source of Contaminants to the Estuarine Food Web	8/1/2007	6/30/2010	\$790,000.00
1053	UC Berkeley	The Transport and Dispersion of Rafting Vegetation in the Sacramento-San Joaquin Delta	7/1/2007	12/31/2010	\$200,975.00
1054	Dept of Water Resources	Analysis of Archived Samples to Assess Patterns of Historic Invasive Bivalve Biomass	4/1/2008	12/31/2010	\$219,822.00

GRANTS (cont'd)

Agreement #	Contractor	Project Title	Start Date	End Date	Total
	•	DELTA SCIENCE PROGRAM			
1055	Dept of Water Resources	Spatial and Temporal Quantification of Pesticide Loadings to the Sacramento River, San Joaquin River; and Bay-Delta to Guide Risk Assessment for Sensitive Species	7/1/2008	6/30/2010	\$395,700.00
2005	UC Berkeley	The Role of the San Francisco Bay Delta in juvenile Rearing for Winter and Spring Run Chinook Salmon, to be Determined by Otolith Microchemistry	4/1/2010	6/30/2012	\$228,092.00
F-03-RE-029	US Geological Services	Phytoplankton Communities in the San Francisco Estuary: Monitoring and Management Using A Submersible Spectrofluorometer	7/13/2005	12/31/2010	\$1,720,009.00
S-05-SC-054	Dept of Water Resources	Phytoplankton Communities in the San Francisco Estuary: Monitoring and Management Using A Submersible Spectrofluorometer Biomass and Toxicology of A New Established Bloom of the Cyanobacteria	5/1/2006	6/30/2011	\$159,158.00
S-05-SC-056	Dept of Water Resources	Microcystis Aeruginosa and its Potential Impact on Beneficial Use in the Sacramento-San Joaquin Delta	6/1/2006	6/30/2010	\$500,000.00
U-05-SC-030	UC San Francisco	Modeling the Delta Smelt Population of the San Francisco Estuary	4/1/2006	3/31/2009	\$997,027.00
U-05-SC-031	UC Berkeley	Identifying the Causes of Feminization of Chinook Salmon in the Sacramento and San Joaquin River System	1/1/2006	6/30/2010	\$1,167,141.00
U-05-SC-032	UC San Francisco	Foodweb Support for the Threatened Delta Smelt and Other Estuarine Fishes in Suisun Bay and the Western Sacramento-San Joaquin Delta	1/1/2006	12/31/2010	\$1,394,871.91
U-05-SC-040	UC Santa Cruz	Life History Variation in Steelhead Trout and the Implications for Water Management	2/1/2006	6/30/2010	\$1,209,216.00
U-05-SC-047	UC Davis	Survival And Migratory Pattern Of Central Valley Juvenile Salmonids	3/1/2006	6/30/2011	\$1,756,534.74
U-05-SC-058	UC Santa Barbara	How Abiotic Processes, Biotic Processes, and Their Interactions Sustain Habitat Characteristics and Functions in River Channels and Their Floodplains: An Investigation of the Response of A Gravel-Bed Reach of the Merced River to Restoration	6/1/2006	6/30/2011	\$1,400,000.00

CONTRACTS

Agreement #	Contractor	Project Title	Start Date	End Date	Total
		DELTA SCIENCE PROGRAM			
1002	UC Davis	Bay-Delta Science Seminar Series	12/1/2006	6/30/2011	\$28,875.00
1003	Association of Bay Area Governments	Interjurisdictional Employee Exchange Program (Dusty Boeger)	12/1/2006	11/30/2010	\$467,725.04
1082	UC Regents, Davis	San Francisco Estuary & Watershed Science on-line Journal	2/1/2008	1/31/2011	\$475,133.00
1124	Elizabeth Soderstrom Consulting	Performance Measures Assistance (Elizabeth Soderstrom)	2/1/2010	1/31/2011	\$50,000.00
1133	Association of Bay Area Governments	ABAG 2010 - Science Experts	8/1/2009	6/30/2011	\$300,000.00
U-04-SC-005	UC San Diego	Science Fellows	11/1/2004	10/31/2011	\$7,200,000.00
	_	EXECUTIVE OFFICE	1	1	
1074	Leg Counsel Bureau	Squawk Box	10/1/2007	6/30/2010	\$3,525.00
1114	Metropolitan Water District of Southern California	BDCP	2/2/2009	12/31/2010	\$320,528.00
1127	CALFIRE	HR Services	7/1/2009	6/30/2012	\$307,212.00
1128	Dept of Justice	Legal Services	7/1/2009	6/30/2012	\$1,500,000.00
1132	Dept of Tech Services	IT Services (e-mail/web hosting)	7/1/2009	6/30/2012	\$474,350.00
		, G/			
1134	Dept of Water Resources	Graphics for ongoing printed materials, video and multimedia products	9/1/2009	6/30/2012	\$330,000.00

CONTRACTS (cont'd)

Agreement #	Contractor	Project Title	Start Date	End Date	Total
		EXECUTIVE OFFICE			
2000	Natural Resources Agency	Legislative Tracking Services	2/3/2010	11/30/2010	\$583.00
					•
2001	State Controller's Office	CalATERS (travel)	2/3/2010	6/30/2012	\$3,600.00
2002	Dept of Tech Services	CALSTARS (Accounting System)	7/1/2009	6/30/2012	\$3,000.00
2003	State Controller's Office	CLAS System for Tracking Employee Leave Balances	4/1/2010	4/1/2013	\$2,500.00
2004	Dept of General Services	Accounting Services	2/3/2010	6/30/2010	\$93,000.00

RECEIVABLES

Agreement #	Contractor	Project Title	Start Date	End Date	Total
		PROGRAM PERFORMANCE			
R09AP20046	US Bureau of Reclamation	CPPIS Data Collection, Enhancement, and Support Project	7/1/2009	6/30/2012	\$750,000.00
		DELTA SCIENCE PROGRAM			
4600004441	Dept of Water Resources	Receivable for #U-05-SC-030, Modeling the Delta Smelt Population of the San Francisco Estuary	4/1/2006	6/30/2010	\$997,027.00
4600008687	Dept of Water Resources	Receivable for Delta Science 2010 PSP Research Grants	4/1/2010	6/30/2013	\$8,000,000.00
G09AC00249	US Geological Survey	Receivable for #1133, ABAG 2010 - Science Experts	7/15/2009	1/15/2011	\$300,000.00

Delta Stewardship Council Budget

General Fund Resources (19 positions + 4 TH + OE) Cal Fire (18 positions only)	FY 2009-10 6,477 4,997 1,480	FY 2010-11
DSC 30 positions + 4 temp help + OE	1,460	5,877
ELPF		751
Federal	2,919	2,919
Reimbursements (Delta Plan) Reimbursements (4 PY DFG, 1 PY SWRCB)	2,000	500
Reimbursements Reimbursements (Delta Plan	6,323	
contract – DWR Prop 84) Reimbursements (future contracts)		16,000 5,323
Prop 50 – Science (11 positions only)	800	
Resources Agency, Program 20	18,519	
2010 Budget Act (proposed)		31,370
Prior Yr-Prop 50 – Science (grants)* Prior Yr-Reimb – Science (grants)*	17,563 8,000	
Prior Yr-Prop 50 – Science (11 py)	0,000	1,100
Prior Yr-Prop 50 - Science (grants)		8,601
Prior Yr-Reimb – Science (grants)		8,000
Totals	44,082	49,071
Total Personnel	48	46

^{*}Appropriation expires 6/30/2012

Agenda Item: 7a

Meeting Date: April 1, 2010

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Phone: (916) 445-0441

Proposed Procedures for Delta Stewardship Council Meetings

Requested Action: This action would adopt procedures for Delta Stewardship Council meetings. It is consistent with meeting procedures adopted by other state boards and commissions, and reflective of meeting procedures adopted by various county boards of supervisors.

Recommendation

In order to provide for the orderly and effective conduct of meetings of the Council, staff recommends that the Council adopt the following resolution:

"The Delta Stewardship Council hereby adopts as its meeting procedures, the attached "Procedures for Delta Stewardship Council Meetings.""

Background

Chapter 1 (commencing with Water Code section 85200) and Chapter 2 (commencing with Water Code section 85210) of Part 3 of the Sacramento-San Joaquin Delta Reform Act of 2009, establish the Delta Stewardship Council as an independent agency of the state, and provide for its mission, duties, and responsibilities.

The Council is required to meet monthly in a public forum (85200(f)), and is subject to specified quorum and voting requirements in order to transact business (85210.5).

The Council has the power to adopt regulations or guidelines as needed to carry out its powers and duties (85210(i)).

Fiscal Information

Not applicable

List of Attachments

Attachment 1 - Proposed Procedures for Delta Stewardship Council Meetings

Contact

Chris Stevens Chief Counsel

Agenda Item: 7a Attachment 1 Page 1

PROCEDURES FOR DELTA STEWARDSHIP COUNCIL MEETINGS

- Purpose: These procedures are adopted for the purpose of providing for the orderly and effective conduct of meetings of the Delta Stewardship Council (Council).
- 2. Open Meetings: All meetings of the Council will be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code sec. 11120 et seq.). Meetings of the Council will be open to the public, except for such closed sessions as authorized by that act (e.g., personnel decisions, pending litigation). Meetings will be webcast (and then archived on the Internet) or otherwise recorded electronically, subject to available funding and the proper functioning of equipment.
- 3. **Time and Place of Regular Meetings**: Unless otherwise specified, the Council will meet regularly, on the fourth Thursday and Friday of every month, at its headquarters at 650 Capitol Mall, 5th Floor, Sacramento, California. At least two regular meetings will take place at an alternate location within the boundaries of the legal Delta or Suisun Marsh.
- 4. **Special and Emergency Meetings**: Under certain limited circumstances necessitating immediate action, as specified in the Bagley-Keene Act, the Council may convene a special or an emergency meeting in accordance with that act.
- 5. Hearings: The Council may hold hearings in all parts of the state necessary to carry out the powers vested in it, and for these purposes, has certain powers conferred upon the heads of state departments specified in law (Government Code sec. 11180 et seq.). Any hearing by the Council may be conducted by any member, or other designee, upon authorization of the Council, and he or she will have all powers duly granted to the Council under law, provided that any final action of the Council will be taken by a majority vote of the membership of the Council at a regular meeting.
- 6. **Teleconference Meetings**: The Council may conduct audio or audio/visual teleconference meetings in accordance with the Bagley-Keene Act. When a teleconference meeting is held, each site that includes a member of the Council must be listed on the agenda and accessible to members of the public; all proceedings must be audible; and votes must be taken by roll call. The Council may also provide members of the public with additional locations from which the public may observe or address the Council by electronic means.
- 7. Quorum/Voting: A majority of the voting members of the Council will constitute a quorum for the transaction of the business of the Council. A majority vote of the voting membership is required to take action with respect to any matter. The vote of each member will be individually recorded. The board will not transact the business of the Council if a quorum is not present at the time a vote is taken; however, board members constituting less than a quorum may meet as a committee of the board and submit their recommendations to the board when a quorum is present.

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8. Election and Duties of Chair/Vice Chair: Council members will elect a Chair and a Vice Chair from among the membership, each of whom will serve for not more than four years in that capacity. The Chair will preside over all meetings of the Council, maintain orderly procedure in accordance with these procedures and applicable law and decide questions of procedure subject to appeal to the full membership. The Chair may vote on all matters before the Council, may participate in discussions relating to any matter, and may second any motion without relinquishing the chair. In the Chair's absence or inability to act, the Vice Chair shall preside.

- 9. Attendance/Duties of Executive Officer, Chief Counsel, and Assistant to Council: The Executive Officer, or an appropriate designee, will attend all meetings of the Council, and be prepared to advise the Council on all matters coming before it and for implementing all actions taken by the Council. The Chief Counsel, or an appropriate designee, will attend all meetings of the Council, and will act as parliamentarian and be prepared to advise the Council on questions of law. The Assistant to the Council, or an appropriate designee, will attend all meetings of the Council, facilitate orderly public comment through the use of speaker request forms, and maintain a full and complete record of all meetings and the vote of each member as required by law and these procedures.
- 10. Required Notice/Agendas: The Assistant to the Council will ensure that notices of regular meetings, along with agendas that sufficiently describe the items of business to be transacted or discussed, are posted on the Internet and mailed, as appropriate, at least 10 days in advance of the meeting. The Executive Officer will prepare agendas for the Council, working closely with the Chair and other members, and with the Chief Counsel, regarding closed session items. Action items of a routine nature may be bundled together as a single consent calendar item; provided that any member may remove any item from the consent calendar, to be discussed and voted upon separately at an appropriate place in the agenda determined by the Chair, and the Council will then approve the remainder of the consent calendar. At the discretion of the Council, all items appearing on the agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action by the Council. A public comment period will be included at the end of each agenda, during which time, members of the public may address the Council—subject to reasonable time limits set by the Chair-- on matters within its jurisdiction, but not listed for action or discussion on that agenda. Items may not be added to a posted agenda, except in limited circumstances necessitating immediate action, as specified in the Bagley-Keene
- 11. General Format for Agenda Item Discussion at Meetings: (A) The Council will discuss agenda items in sequential order; provided that the Chair may take items out of sequential order to accommodate the public or expedite the conduct of the meeting; (B) The Chair will clearly announce the agenda item number and state what the subject is; (C) the Chair will then invite the appropriate persons to report on the item, including any recommendations they may have; (D) the Chair will ask members if they have any technical or other clarifying questions regarding the item; (E) the Chair will invite public comments on the item, and, if numerous

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members of the public wish to speak (as indicated by the number of speaker request forms submitted), may limit the time of each public speaker; (F) the Chair will invite a motion for the members, and announce the name of the member who makes the motion; (G) the Chair will determine if any member wishes to second the motion, and will announce the name of the member who seconds the motion. The Chair, in his or her discretion, may decide to proceed with consideration and a vote on the motion even when there is no second; (H) If the motion is made and seconded, the Chair will make sure that all members understand the motion; (I) the Chair will then invite discussion of the motion by the members; (J) the Chair will then take a vote, announce the results, and state what action (if any) the Council has taken..

- **12. Overruling the Chair:** A decision of the Chair with respect to the interpretation or applicability of these procedures may be overruled by a majority vote of the membership of the Council.
- **13. Robert's Rules:** If these procedures or the law do not clearly address a specific procedural situation, the Chair may refer to the current edition of Robert's Rules of Order for guidance.

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Proposed Delegation of Authority to the Executive Officer

Requested Action: This action would delegate authority to the Executive Officer to administer the day-to-day affairs of the Council. It is consistent with delegations adopted by other state boards and commissions, and will allow the Council to more properly focus its attention on significant Delta-related policy matters.

Recommendation

In order to provide for the orderly administration of the day-to-day affairs of the Council, staff recommends that the Council adopt the following resolution:

"The Delta Stewardship Council hereby delegates to its Executive Officer the authority to administer the regular and day-to-day affairs and responsibilities of the Council, as set forth in the attached "Delegation of Authority to the Executive Officer."

<u>Background</u>

Water Code section 85201 requires the Delta Stewardship Council to appoint an Executive Officer, who shall serve full time at the pleasure of the Council (85201(d)), and who, in turn, shall hire employees necessary to carry out Council functions (85201(e)).

Water code section 85210(d) provides that the Council has the power to delegate administrative functions to Council staff.

Phone: (916) 445-0441

Fiscal Information

Not applicable

List of Attachments

Attachment 1 - Proposed Delegation of Authority

Contact

Chris Stevens Chief Counsel

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DELTA STEWARDSHIP COUNCIL DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER

The Delta Stewardship Council (Council) hereby delegates to the Executive Officer the authority to administer the regular and day-to-day affairs and responsibilities of the Council, including the functions and powers specified below, consistent with applicable law and the policies of the Council, without further, specific authorization.

The Executive Officer may delegate to other staff any part of his or her functions, powers, or authority, but the Executive Officer shall at all times be responsible for assuring that the affairs of the Council are fully and faithfully discharged.

The foregoing delegation to the Executive Officer includes the authority to:

- Appoint and manage other Council staff, assign duties and functions to staff (which may include providing assistance to the Delta Conservancy), establish procedures governing staff operations, and administer all Council personnel matters.
- 2. Administer and oversee the Council's budgetary and fiscal affairs, subject to Council review and direction on the proposed annual budget and other significant budgetary and fiscal matters.
- 3. Award and execute contracts, task orders, grant agreements, interagency agreements and other instruments or documents on the Council's behalf, that amount to no more than \$500,000 (including extensions and amendments), as necessary to carry out the authority delegated herein.
- 4. Undertake administrative actions, including, but not limited to, preparing (together with the Chair and other members) agendas and issuing notices of Council meetings; organizing and facilitating interagency and stakeholder advisory groups, as appropriate, and otherwise implementing the Council's policies and regulations.
- 5. Lease office space, purchase or lease equipment, and procure other materials, supplies, and technical services necessary to meet ongoing operational needs.
- 6. Initiate rulemaking proceedings, subject to adoption of any such rules by the Council.
- 7. Prepare, sign, and file documents necessary to comply with the California Environmental Quality Act (CEQA), subject to review, certification, and adoption by the Council, as appropriate. Review and comment on state agency CEQA documents for projects outside the Delta that the Council determines will have a significant impact on the Delta.
- 8. Respond to Public Record Act requests.
- 9. Arrange for payment of statutory compensation to Council members, and reimbursement for expenses necessarily incurred in the performance of their official duties.
- 10. In coordination with the Chief Counsel and the Office of the Attorney General, defend against any legal actions brought against the Council, and, with prior

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notification to the Council, file and prosecute legal actions on the Council's behalf as necessary to carry out the Council's mission and duties.

In exercising the authority herein delegated, the Executive Officer is directed, without restricting the authority specified, to bring the following matters to the attention of the Council at a meeting or by other appropriate communication:

- (a) Matters of a unique or unusual nature.
- (b) Matters that appear to depart from the policies of the Council.
- (c) Matters involving significant policy questions.
- (d) Highly controversial or potentially controversial matters.
- (e) Matters that involve a substantial risk of litigation.
- (f) Any matter that a member of the Council requests to be brought to the attention of the Council.
- (g) Any matter that, in the judgment of the Executive Officer, should be brought to the attention of the Council.

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Phone: (916) 445-0441

Conflict of Interest Code Adoption Procedures

Summary: The Council must institute a formal rulemaking to adopt a conflict of interest code. Once an organizational chart listing staff positions is ratified by the Council, staff will prepare a draft code and rulemaking package for action at the Council's next meeting.

Background

Under the state Political Reform Act (Government Code Section 87300 et seq.), all public agencies are required to adopt a conflict of interest code within six months after they come into existence. A code designates positions within the agency required to file Statements of Economic Interests (Form 700)--positions that make or participate in making decisions, including voting on matters, negotiating contracts, or making recommendations on purchases without substantive review-- and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests (i.e., investments, interests in real property, sources of income, and business positions) that may create conflicts of interest.

Adoption of a conflict of interest code is a formal regulatory proceeding, the procedures for which are outlined in the attached document. Once an organizational chart listing personnel positions is ratified by the Council at this initial meeting, staff will prepare for the Council's consideration and action at its next meeting, a draft conflict of interest code and accompanying regulatory package.

Staff will also invite a representative from the Attorney General's office to briefly discuss at the Council's next meeting conflict of interest rules in general, as well as open meeting law requirements under the Bagley-Keene Act. This is a follow-up to the AG's informational pamphlets also included as attachments to this staff report.

Fiscal Information

Not applicable

List of Attachments

Attachment 1 - Conflict of Interest Code Adoption Procedures

Attachment 2 - Conflicts of Interest

Attachment 3 - The Bagley Keene Open Meeting Act 2004

Contact

Chris Stevens Chief Counsel

Agenda Item: 7c Attachment 1 Page 1

CONFLICT OF INTEREST CODE ADOPTION PROCEDURES

ADOPTION OF CODE WITHIN 6 MONTHS OF CREATION OF AGENCY

- 1) Prepare an initial proposed code (once organization chart is developed/ratified by Board)
- 2) Prepare a notice of intention to adopt a conflict of interest code, which either schedules a public hearing or establishes a written comment period

Board action directing staff to initiate rulemaking proceedings

- 3) File a copy of notice with Office of Administrative Law (OAL) for publication in the California Notice Register at least 60 days before the public hearing or close of comment period
- 4) File an endorsed copy by OAL with FPPC at least 45 days before public hearing or close of written comment period
- Provide notice pursuant to Government Code section 87311, including a copy of notice to each employee of agency affected by proposed code at least 45 days before public hearing or close of comment period by serving employees individually, posting notice on employee bulletin boards, or by publishing notice in employee newsletter
- 6) Make the proposed code available for inspection and copying to interested persons for at least 45 days prior to public hearing or close of comment period
- 7) Accept written comments from interested persons through conclusion of public hearing or close of comment period
- 8) Conduct public hearing on proposed code if scheduled or otherwise requested by an interested person

Board action adopting final proposed code and directing transmittal to FPPC for approval

- 9) Transmit final proposed code in strikeout/underline to FPPC accompanied by:
 - a) Declaration of Chief Executive Officer
 - b) Summary of any hearing held by agency
 - c) Copies of all written submissions made to agency regarding proposed code

- d) Written explanation of reasons for designations and disclosure responsibilities of officers, employees, members or consultants of agency
- e) Names and addresses of all persons who participated in any public hearing on the proposed code and to all persons who requested notice from agency of the date of the Commission hearing on the adoption of the code
- f) Current organizational chart of agency
- g) Job descriptions for all designated employees
- h) Copy of statutory authority under which agency was created with specific citations to provisions setting forth duties and responsibilities of agency
- i) Identity of the person to whom the agency reports
- j) Copy of last annual or regular report prepared by agency, or if there is no report, copies of recent minutes of agency meetings
- k) Brief description of duties and terms of all consultants working with agency who are not designated employees
- I) FPPC Executive Director shall either
- (1) Prepare a notice which specifies written comment period and date which written comments must be received in order for them to be considered and send notice to all persons who have requested notice at least 45 days before the hearing; or
- (2) Return proposed code to agency with written recommendations for revision. If an agency objects to the recommendations for revision, a hearing may be requested before the FPPC.
- m) If no hearing is requested as set forth above, FPPC Executive Director at end of 45 day written comment period shall either approve the code or return the code to agency for revision.
- n) If hearing is requested, the FPPC shall approve the proposed code, revise the proposed code and approve it as revised or direct FPPC Executive Director to return proposed code to agency for revision and resubmission within 60 days.
- o) If code approved, the FPPC Executive Director shall return copy of code or amendment to agency with notification of FPPC approval
- p) Code as approved by FPPC shall be transmitted within 30 days by agency to OAL, which shall file code promptly with Secretary of State without further review

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- q) Code becomes effective on 30th day after date of filing with Secretary of State
- r) Code shall be maintained in office of Chief Executive Officer of agency and made available for inspection and copying during business hours. FPPC will also maintain a copy at their offices

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Introduction to the Delta Science Program and Council Authority under Enabling Statutes

Summary: CALFED Lead Scientist Cliff Dahm will present the roles of the Delta Science Program and Delta Independent Science Board (Delta ISB) described in the Sacramento-San Joaquin Delta Reform Act of 2009 and compare to the CALFED Science Program and CALFED Independent Science Board. Dahm will present current and planned activities for the Delta Science Program and Delta ISB and how they will support the Delta Stewardship Council.

Background

The Sacramento-San Joaquin Delta Reform Act of 2009 identifies the Delta Science Program as successor to the CALFED Science Program, which has been in existence since 2000 and established a solid reputation for providing the best possible unbiased scientific information for decision-making in the Bay-Delta system. The mission of the Delta Science Program — identical to the CALFED Science Program — is to provide the best possible unbiased scientific information to inform water resource and environmental policy decision-making in the Bay-Delta system. This mission is carried out through funding important research, synthesizing and communicating scientific information to policymakers and decision makers, promoting independent scientific peer review, convening topical workshops, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program also will assist with development and periodic updates of the Delta Plan's adaptive management program.

The Delta Science Program currently consists of 15 staff: 12 state, 2 federal and 1 contract employees. While under the CALFED umbrella, the Program has funded crucial scientific research through competitive grants and the predoctoral and postdoctoral fellows program to fill critical gaps in our understanding of the current and changing Bay-Delta system. The Program has also facilitated independent scientific reviews on such key actions as the Two-Gates Fish Protection Demonstration Project and the biological opinion on salmonids and green sturgeon. Additionally, the Science Program published *The State of Bay-Delta Science*, a landmark reference on current Bay-Delta science that is expected to play a critical role in the implementation of Delta Vision and the Bay-Delta Conservation Plan (BDCP). The Program is currently working on several high priority initiatives at the request of the state and federal agencies working in the Bay-Delta system including a recent review of the Vernalis Adaptive Management Plan, development of environmental flows for the Delta, an integrated monitoring framework, and support of effectively incorporating adaptive management,

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into the Bay Delta Conservation Plan (BDCP). Other major planning efforts underway include a 2010 proposal solicitation package to fund high priority research identified by Delta stakeholders (see Agenda Item 8d) and the September 2010 Bay-Delta Science Conference where important results and analyses are presented.

The Sacramento-San Joaquin Delta Reform Act of 2009 identifies the Delta Independent Science Board as successor to the CALFED Independent Science Board (ISB). The primary role of the Delta ISB is to provide oversight of all scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs. Reviews will be scheduled to ensure that all major programs are reviewed at least once ever four years. This role differs from the role of the CALFED ISB, which was to provide *insight*, *foresight* and oversight for *CALFED Bay-Delta Program* efforts. The Delta ISB role has been broadened to include all Bay-Delta scientific efforts, and narrowed to focus on high-level oversight analogous to National Research Council reviews commissioned by the National Academies. The Delta ISB also plays the role of identifying future Lead Scientists as the CALFED ISB previously played in selecting lead scientists.

The Delta ISB will consist of up to ten members appointed by the Council, serving fiveyear terms that may be renewed once. Delta ISB members will be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. They cannot be directly affiliated with any programs or agencies subject to Delta ISB review activities.

The Delta ISB is tasked with reviewing the BDCP draft environmental impact report and providing its comments to the Council and the Department of Fish and Game. In addition, the California Department of Water Resources is required by the Delta Reform Act of 2009 to consult with the Delta ISB and the Council during development of the BDCP.

Initial activities of the Delta ISB also will include making recommendations to the Council on the process for finding the next Delta Lead Scientist and review of draft BDCP products.

Fiscal Information

The Delta Science Program is funded predominantly through state bond funds with a small amount of funds annually appropriated through the US Geological Survey. The Delta Science Program provides the funding for the Delta Independent Science Board.

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List of Attachments

Attachment 1: Delta Science Program One-Sheet

Phone: (916) 445-0463

Contact

Dr. Clifford Dahm Lead Scientist

DELTA SCIENCE PROGRAM

"As the Legislature and Governor agree, decision-makers need to be well informed scientifically to assess alternatives and develop sound solutions for managing the Delta. Our role is to provide that information."

- Cliff Dahm, Delta Lead Scientist

Under SBX7 1, the CALFED Science
Program became the Delta Science
Program, reporting to the newly created
Delta Stewardship Council. The mission of
the Delta Science Program, according to
SBX7 1, is to provide the best possible
unbiased scientific information for water and
environmental decision making in the BayDelta system.

Importance of the Science Program:

- Independence and scientific oversight
- Integrate across program and agency issues/mandates
- Ensure that decision-makers have access to reliable information about complex delta issues
- Play honest broker role among competing interests

This oversight of scientific research, monitoring, and assessment programs that support adaptive management of the Bay-Delta is achieved through the Delta Independent Science Board (ISB) – a standing board of distinguished experts who will help the Delta Stewardship Council establish an independent and objective view of the science issues that underlie important policy decisions.

DELTA SCIENCE RESEARCH

The Science Program funds scientific research as a critical component in establishing unbiased and authoritative knowledge directly relevant to Bay-Delta actions. Working with stakeholders, the following Proposal Solicitation Package (PSP) topics were selected for 2010:

- Native Fish Biology and Ecology
- Food Webs of Key Delta Species and their Relationship to Water Quality and Other Drivers
- Coupled Hydrologic and Ecosystem Models
- Water and Ecosystem Management Decision Support System Development

From 2003-2009, the CALFED Science Program awarded about \$27 million in funding for 43 predoctoral and postdoctoral fellows and 34 research grants. Key topics included: salmonids, sturgeon, and delta smelt; food webs, invasive species, and contaminants; climate change; hydrodynamics and flows, and rivers, wetlands and floodplains.

The Delta Science Program

Cliff Dahm, Lead Scientist









Delta Stewardship Council Meeting
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Delta Science Program

 In statute, the Delta Science Program is identified as the successor to the CALFED Science Program, which has been in existence since 2000.



Vision, Mission & Objectives

- Vision: All Bay-Delta water and environmental policy is founded on the highest caliber science
- Mission: To provide the best possible, unbiased scientific information for water and environmental decision-making in the Bay-Delta system
- Objectives
 - Support research
 - Synthesize scientific information
 - Facilitate independent peer review
 - Coordinate science
 - Communicate science



Why We Are Important



- Independence and scientific oversight
- Integrate across program and agency issues/mandates
- Ensure that decision-makers have access to reliable information about complex delta issues
- Play honest broker role among competing interests

Staffing

- State Staff (12 positions):
 - Deputy Executive Officer
 - 2 Program Managers
 - 6 Technical staff (4 vacant)
 - 3 Support staff
- Federal Staff (2 positions):
 - Lead Scientist (USGS or via IPA)
 - Special Asst. to the Lead Scientist
- Contracted staff (1 position)



Program Priorities



- Support to the Council Delta Plan
- Implementation of a new ISB
- 2010 Proposal Solicitation Package
- Bay Delta Conservation Plan (BDCP)

 adaptive management
- State Water Board Delta Flows
- 2010 Bay-Delta Science Conference (September 27 – 29)





- Up to10 members 5 year terms
- Primary Role: Provide oversight of research, monitoring and assessment
- Conduct periodic high-level reviews
- Help identify a new Lead Scientist
- Review draft BDCP

Budget/Funding

- Program uses state and federal funds
- Spent \$2.6 million in FY08/09
 - Bond Freeze on state Proposition dollars in December 08 (lost 6 months of work)



- Projected to spend \$5.4 million in FY09/10
 - Limited availability of cash from bond sales
 - Current deficit to meet projected expenditures



- 43 pre-doctoral and postdoctoral fellows (23 current)
- 34 multi-year research grants (22 current)
- Bond-funded (bond freeze December 2008 June 2009)
- \$26.8 million dollars in total awards







Ongoing High Priority Research

- Current Science Program Funding Portfolio
 - Salmonids and sturgeon (\$8.0 M)
 - Foodwebs, invasive species, and contaminants (\$6.2 M)
 - Climate and global change (\$4.4 M)
 - Streams and rivers, wetlands, and floodplains (\$3.9 M)
 - Delta smelt (\$ 3.7 M)
 - Hydrodynamics and flows (\$ 0.6 M)





Delta Science Program Highlights

For the past decade, the CALFED Science Program has played an integral role in developing scientific information on issues critical for managing the Bay-Delta system. The Delta Science Program will build upon that critical role going forward.

• Sponsor the Bay-Delta Science Conference

This biennial conference brings together more than 1,000 San Francisco Bay/Sacramento-San Joaquin Delta scientists, managers and policymakers in a forum for presenting the latest technical analyses and results from Bay-Delta research—much of it funded by the Science Program. The Sept. 27-29, 2010 conference theme is *Ecosystem Sustainability: Focusing Science on Managing California's Water Future*.

Support Environmental Flows Development

State statute enacted in 2009 requires the State Water Resources Control Board and the California Department of Fish and Game to establish flow criteria for the Delta and major rivers in the Sacramento and San Joaquin River basins. The Delta Lead Scientist and staff are providing critical scientific information to support the state in its statutory requirement. Setting flow criteria worldwide has generated strong scientific and engineering protocols for making these challenging decisions.

Published The State of Bay-Delta Science, 2008
 Considered a 'go-to' book for managers, policy makers, and the interested public, this definitive reference pulls together in one publication information on a broad array of issues critical to the sustainable management of water and the Delta.



Produce Science News newsletters

A bimonthly electronic publication highlighting science issues and events relevant to the Bay-Delta community. The latest issue included findings from a Delta Science-sponsored workshop on large-scale ecosystem restoration efforts in the North Delta and Suisun Marsh.



See the Science Program website for other communications products including workshop and review panel materials on varied topics as the role of ammonia/ammonium in the functioning of the Delta, large-scale restoration approaches for the Delta and Suisun Marsh, and peer reviews of scientific projects in the Delta.



http://www.deltacouncil.ca.gov/delta_science_program/

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Designation of the Interim Delta Lead Scientist

Requested Action: The Sacramento-San Joaquin Delta Reform Act of 2009 states that the Delta Stewardship Council shall appoint a lead scientist for the Delta Science Program. This resolution calls upon the Council to appoint the CALFED Lead Scientist as Interim Delta Lead Scientist through June 30, 2010, which is the remainder of the two-year CALFED Lead Scientist term approved by the Natural Resources Secretary in 2008.

Recommendation

Staff recommends that the Council approve the following resolution: "The Delta Stewardship Council hereby appoints CALFED Lead Scientist Dr. Clifford Dahm as lead scientist for the Delta Science Program through June 30, 2010."

Background

The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Delta Stewardship Council to appoint a lead scientist (Delta Lead Scientist) for the Delta Science Program after consultation with the Delta Independent Science Board. The Delta Lead Scientist oversees implementation of the Delta Science Program, the successor to the CALFED Science Program. The Act requires the Delta Lead Scientist to meet the following qualifications: (1) hold an advanced degree in a field related to water or ecosystem management; (2) have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management; (3) have experience advising high-level managers in science-based decision-making in the areas of water management and ecosystem restoration; and (4) have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta. The Delta Lead Scientist's term is for no more than three years and may be renewed once.

The Delta Independent Science Board (Delta ISB) has not yet been appointed, and so is not available to provide input on appointing the Delta Lead Scientist. The Delta ISB is expected to be appointed by the Council once nominees are brought to the Council (see Agenda Item 8c).

Staff suggests that current CALFED Lead Scientist, Dr. Clifford Dahm, who oversaw implementation of the CALFED Science Program, be appointed as Interim Delta Lead Scientist for the remainder of his term. Dr. Dahm was appointed CALFED Lead Scientist

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by Natural Resources Secretary Mike Chrisman for a two-year term from July 1, 2008 to June 30, 2010. Staff expects that the Delta ISB will be appointed and will provide recommendations to the Council on the process to follow for identifying the next Delta Lead Scientist before Dr. Dahm's term ends.

Fiscal Information

Funding for the Lead Scientist is in the Delta Science Program's USGS budget. The Lead Scientist is a USGS employee.

List of Attachments

None

Contact

Lauren Hastings Deputy Executive Officer Phone: (916) 445-5026

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Procedures for Selection of the Delta Independent Science Board

Requested Action: The Delta Stewardship Council is required by the Sacramento-San Joaquin Delta Reform Act of 2009 to appoint a Delta Independent Science Board as one of their early actions. This resolution calls upon the Interim Delta Lead Scientist to work with the previous CALFED Independent Science Board chair and the Delta Stewardship Council chair to develop a list of Delta Independent Science Board nominees for the consideration of the Council.

Recommendation

Staff recommends that the Council approve the following resolution: "The Delta Stewardship Council requests the Delta Lead Scientist, Dr. Clifford Dahm, to work with former CALFED Independent Science Board chair, Dr. Jeffrey Mount, and the Delta Stewardship Council chair, to develop a list of nominees for the Delta Independent Science Board and provide the list of nominees to the Council for their consideration at their next meeting."

Background

The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Delta Stewardship Council to appoint a Delta Independent Science Board (Delta ISB) as one of their early actions. The Act states that the Delta ISB shall consist of no more than 10 members who will serve five-year terms and may serve no more than two terms. Members of the Delta ISB shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The Delta ISB will provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs. These reviews shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years. The Delta ISB is the successor to the CALFED ISB, which ended in December 2008 when all member contracts expired.

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Fiscal Information

Funding for the Delta ISB is part of the Delta Science Program budget. Delta ISB members are compensated for their time and travel as is standard when participating on a standing board or technical panel.

List of Attachments

None

Contact

Dr. Clifford Dahm Lead Scientist Phone: (916) 445-0463

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Delta Science Program Proposal Solicitation Package for Research Grants

Summary: As stated in the Sacramento-San Joaquin Delta Reform Act of 2009, the mission of the Delta Science Program is to provide the best possible unbiased scientific information to inform water and environmental decision-making in the Delta. The mission is carried out in part through funding research on priority research topics to inform policy and management. Interim Delta Lead Scientist Cliff Dahm will describe the 2010 Focused Proposal Solicitation Package (PSP) seeking research proposals in the four topic areas developed by stakeholder discussions on research needs for the Delta. The Delta Science Program will seek approval of the PSP guidelines at the next Delta Stewardship Council meeting.

Background

Pending the approval of the Delta Stewardship Council (Council), the Delta Science Program is seeking to invest grant funding in projects that will fundamentally advance the understanding of the complex environments/systems within the Council's jurisdiction to aid policymakers and resource managers. The Delta Science Program has identified up to \$8 million from Proposition 84 for the grants, obtained through a reimbursable agreement with the Department of Water Resources.

Specifically, the Science Program is soliciting research proposals focused on the following four topics:

- 1. Native Fish Biology and Ecology
- Food Webs of Key Delta Species and their Relationship to Water Quality and Other Drivers
- 3. Coupled Hydrologic and Ecosystem Models
- 4. Water and Ecosystem Management Decision Support System Development

As stated in the Sacramento-San Joaquin Delta Reform Act of 2009, the mission of the Delta Science Program is to provide the best possible unbiased scientific information to inform water and environmental decision-making in the Delta. The mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decision makers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. A long-term goal of the Delta Science Program is to establish a body of

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knowledge relevant to the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) actions and the implications of these actions. That body of knowledge, both in perception and reality, must be unbiased, relevant, authoritative, integrated across program elements, and communicated to the scientific community, agency managers, stakeholders, and the public.

Funding research grants through the PSP is one of several tools the Delta Science Program uses in accordance with its mission and goals to establish unbiased and authoritative knowledge directly relevant to Bay-Delta actions. The goal of this PSP is not to create knowledge for its own sake nor is it to fund routine monitoring or mandated projects. The goal is to invest in knowledge that will fundamentally advance the understanding of the complex environments/systems within the Council's jurisdiction to aid policymakers and managers. This knowledge must be timely and highly relevant to Bay-Delta decision-making.

The Delta Science Program 2010 Focused PSP was originally announced in November 2008 as the CALFED Science Program 2009 Focused PSP, with a deadline of early 2009. The deadline was removed in late December 2008 because of the bond freeze resulting from the state's fiscal emergency. The state's current fiscal situation allows for setting of a new deadline for the solicitation, now under the banner of the Delta Science Program within the Delta Stewardship Council rather than the CALFED Science Program within the Natural Resources Agency.

The four topics in the Priority Research Topic List of this PSP were developed for the 2009 CALFED Science Program PSP by a Topic Selection Panel comprised of agency representatives, stakeholders, and independent scientists whose combined expertise covered the breadth of Bay-Delta issues and interests (panelist names and affiliations are available through the PSP website at

http://www.science.calwater.ca.gov/psp/psp_package_2009.html). To help them define and select these topics, the panel used draft topics developed by the CALFED Lead Scientist and the Science Program, public comments received on the draft topics, and information from regional public planning processes and priority management issues, such as the Delta Vision Strategic Plan and the Bay Delta Conservation Plan (BDCP).

The new deadline for proposals will be set for roughly two months after Council approval of the PSP guidelines (June 30, 2010 is anticipated). All complete proposals received by the deadline will undergo administrative review (July 2010), external scientific review (July-September 2010), and review by a Final Review Panel (October 2010). The Final Review Panel will make funding recommendations to the Delta Lead Scientist who, following public comment, will make final recommendations on funding to the Delta Stewardship Council for final approval. Given the timeline noted above, it is expected the Program would seek the Council's funding approval in October or November 2010.

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Fiscal Information

Up to \$8 million of Proposition 84 funds is available for this focused solicitation.

List of Attachments

Attachment 1: Draft Delta Science Program 2010 Focused Proposal Solicitation Package Document

Phone: (916) 445-0463

Contact

Dr. Clifford Dahm Lead Scientist

2010 Focused Proposal Solicitation Package

Cliff Dahm, Lead Scientist

Delta Science Program



Delta Stewardship Council Meeting

Agenda Item 8d

April 1, 2010

Purpose of Funding Research

- Advance the understanding of the complex environments and systems in the Bay-Delta
- ☐ Results must be timely and highly relevant to Bay-Delta decision-making



Focused Research Topic Areas

- Native Fish Biology and Ecology
- Food Webs of Key Delta Species and their Relationship to Water Quality and Other Drivers
- Coupled Hydrologic and Ecosystem Models
- Water and Ecosystem Management Decision Support System Development





Timeline

- ☐ Tentative proposal deadline: June 30, 2010
- Administrative and external review: July Sept
- □ Final Review Panel funding recommendations to Lead Scientist: early October
- Public Comment
- Consideration and Approval by Council: October/November

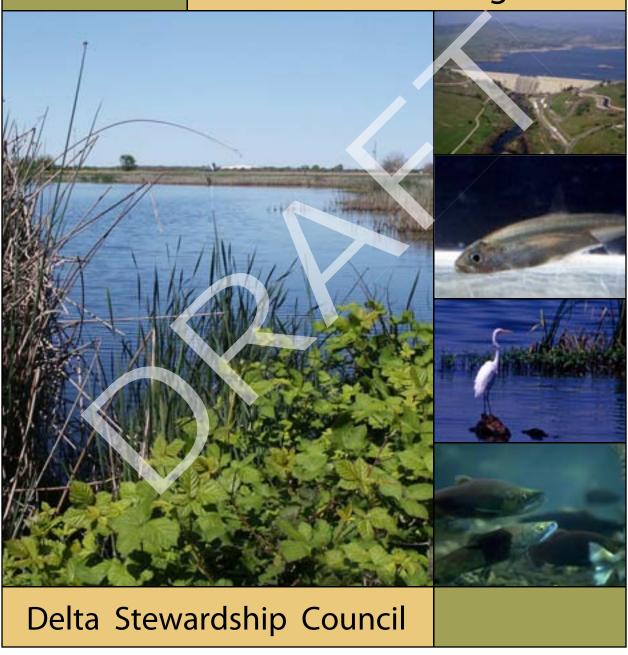




2010

Delta Science Program

Focused Proposal Solicitation Package



SYNOPSIS

Proposal Solicitation Package (PSP) Synopsis

Pending the approval of the Delta Stewardship Council (Council), the Delta Science Program is seeking to invest grant funding in projects that will fundamentally advance the understanding of the complex environments/systems within the Council's jurisdiction. The geographic area of interest is the Bay-Delta System (Figure 1), which includes California's Sacramento and San Joaquin River watersheds and the San Francisco Bay Estuary with a focus on the Delta and Suisun Marsh (Figure 2).

Specifically, the Science Program is soliciting research proposals focused on the following four topics:

- 1. Native Fish Biology and Ecology
- 2. Food Webs of Key Delta Species and their Relationship to Water Quality and Other Drivers
- 3. Coupled Hydrologic and Ecosystem Models
- 4. Water and Ecosystem Management Decision Support System Development

Award Information

■ Anticipated Type of Award: Grant

■ Estimated Number of Awards: Approximately 14 to 18

■ Anticipated Total Funding: Approximately \$8 million

■ Length of Funding: Up to 3 years

Eligibility Information

Any public agency or nonprofit organization capable of entering into a grant agreement with the State or Federal government may apply. This includes, but is not limited to: (1) local agencies; (2) private nonprofit organizations; (3) tribes; (4) universities; (5) State agencies; and (6) Federal agencies.

Deadline

Proposals will be accepted through June 30, 2010.

Contacts

PSP Submittal Website: https://solicitation.calwater.ca.gov/

Proposal Submittal Process Helpline: 916-445-5838 or via email at

help@solicitation.calwater.ca.gov

DELTA SCIENCE PROGRAM

2010 FOCUSED PROPOSAL SOLICITATION PACKAGE

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- **Figures**1. The Bay-Delta System
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1. Terms and Conditions for Funded Grants

I. Introduction

A. Overview of the Delta Stewardship Council

On Feb. 3, 2010, the Sacramento-San Joaquin Delta Reform Act of 2009 took effect, creating the new Delta Stewardship Council as an independent state agency tasked with developing the Delta Plan for achieving the coequal goals of providing a more reliable water supply and protecting and restoring the Delta ecosystem (Figures 1 and 2). Under the same legislation, the CALFED Science Program became the Delta Science Program, and the CALFED Independent Science Board became the Delta Independent Science Board, both reporting to the new Council.

The Delta Stewardship Council (Council), which consists of seven members who are to have diverse expertise providing a broad statewide perspective, is tasked with, among other things,:

- Developing a Delta Plan by January 1, 2012 to further the co-equal goals of Delta ecosystem restoration and water supply reliability;
- Determining, upon appeal, consistency of state and local agency actions with the Delta Plan;
- Considering incorporation of the Bay Delta Conservation Plan into the Delta Plan;
- Appointing the Delta Lead Scientist who oversees the Delta Science Program;
- Appointing members of the Delta Independent Science Board which will provide oversight for all scientific efforts in the Delta; and
- Developing performance measures for the assessment and tracking of progress in meeting the objectives of the Delta Plan including Delta ecosystem health and water supply reliability.

The Council assumes from the California Bay-Delta Authority all administrative rights, abilities, obligations and duties.

B. Overview of the Delta Science Program

The long-term goal of the Delta Science Program (Science Program) is to establish a body of knowledge relevant to the Sacramento/San Joaquin Bay-Delta (Bay-Delta) actions and their implications. That body of knowledge, both in perception and reality, must be unbiased, relevant, authoritative, integrated across program elements, and communicated to the scientific community, agency managers, stakeholders, and the public. The mission of the Science Program is to provide the best possible unbiased scientific information to inform water and environmental decision making in the Delta. The mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decision makers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. As part of the Council, the Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

C. Background of this Proposal Solicitation Package (PSP)

Goals of this PSP

The PSP is one of several tools the Science Program uses in accordance with its mission and goals to establish unbiased and authoritative knowledge directly relevant to Bay-Delta actions. The goal of this PSP is not to create knowledge for its own sake nor is it to fund routine monitoring or mandated projects. The goal is to invest in knowledge that will fundamentally advance the understanding of the complex environments/systems within the Council's jurisdiction to aid policy-makers and managers. This knowledge must be timely and highly relevant to Bay-Delta decision-making.

This focused PSP will help to achieve this goal by:

- 1. identifying scientific unknowns of the highest priority to the Bay-Delta community prior to the opening of the PSP;
- 2. soliciting for and supporting new scientific studies that closely investigate these scientific unknowns;
- 3. thoroughly analyzing what is learned through unbiased scientific review;
- 4. clearly articulating what is learned through publications, conferences, workshops, websites, and other mechanisms.

Development of this PSP

To accelerate the review process and maximize the use of scarce available funds, the Science Program developed a focused set of research topics targeting Bay-Delta priority issues.

The four topics in the Priority Research Topic List of this PSP were developed by a Topic Selection Panel comprising agency representatives, stakeholders, and independent scientists whose combined expertise covered the breadth of Bay-Delta issues and interests (panelist names and affiliations are available through the PSP website at

http://www.science.calwater.ca.gov/psp/psp_package_2009.html). To help them define and select these topics, the panel used draft topics developed by the Delta Lead Scientist and the Science Program, public comments received on the draft topics, and information from recent public planning processes and priority management issues. Some of these efforts included:

- Delta Vision Strategic Plan (DVSP)
- Multiple Science Program workshops in support of DVSP:
 - o Organic Carbon
 - o Delta Conveyance Modeling
 - o Science Issues Related to Delta Conveyance Infrastructure
 - o Defining a Variable Delta to Promote Estuarine Fish Habitat
- Bay Delta Conservation Plan (BDCP)
- Interagency Ecological Program (IEP) Pelagic Organism Decline (POD) Reports
- Public Policy Institute of California (PPIC) Delta Reports and Related Workshops
- Environmental Water Account (EWA) Reviews

- Operations Criteria and Plan (OCAP) Biological Assessment and Opinions
- Delta Risk Management Strategy (DRMS)

Priority issues were considered in the context of currently funded ongoing research, such as grants from previous Science Program PSPs, the Interagency Ecological Program (IEP) Pelagic Organism Decline (POD) work, and Ecosystem Restoration Program (ERP) funded research. An additional consideration was the minimum two- to three-year time frame for most research projects to yield useful products. Integration and synthesis of available information, models, and interdisciplinary approaches were stressed.

The Priority Research Topic List was open to the public for comment from November 12, 2008 through November 14, 2008 and again from November 21, 2008 through December 3, 2008. The Topic List was approved by the Secretary for Resources on December 5, 2008. (See Figure 3 for a summary of the PSP process and schedule). Public comments and the Science Program response are posted on the Science Program website http://science.calwater.ca.gov/psp/psp_package_2009.html.

Guiding Documents

Project applicants unfamiliar with Science Program goals, objectives, and issues are encouraged to review the documents that guide the Program's activities. These documents and a host of other useful information can be found through the Delta Stewardship Council's website (http://www.deltacouncil.ca.gov) and the Science Program website (http://science.deltacouncil.ca.gov). Following are some specific documents that will be particularly helpful to applicants wishing to familiarize themselves with broad and specific Science Program issues:

Bay-Delta perspective:

• CALFED Science Program's *State of Bay Delta Science*, 2008: http://www.science.calwater.ca.gov/publications/sbds.html

Bay-Delta issues:

- Delta Vision Blue Ribbon Task Force's Vision & Strategic Plan (DVSP): http://deltavision.ca.gov/
- Science Program support of DVSP: http://www.science.calwater.ca.gov/delta_vision/dv_index.html
- Science Program Publications: http://www.science.calwater.ca.gov/publications/pub_index.html
- Bay Delta Conservation Plan (BDCP): http://resources.ca.gov/bdcp/
- Pelagic Organism Decline (POD) Reports and Interagency Ecological Program (IEP) Workplans: http://www.science.calwater.ca.gov/pod/pod_index.html
- Delta Risk Management Strategy (DRMS): http://www.drms.water.ca.gov/
 - Science Program Review of DRMS Phase 1 Report: http://www.science.calwater.ca.gov/drms/drms_irp.html

- Delta Regional Ecosystem Restoration Implementation Plan (DRERIP): http://www.science.calwater.ca.gov/drerip/drerip_index.html or http://www.delta.dfg.ca.gov/erpdeltaplan/
- National Marine Fisheries Service Operations Criteria and Plan (OCAP) Biological Opinion workshops and reviews:
 http://www.science.calwater.ca.gov/events/reviews/review_ocap.html
- Environmental Water Account workshop and reviews: http://www.science.calwater.ca.gov/events/reviews/review ewa.html

Science Program previously funded efforts:

- Science Program
 - 2004 PSP funded proposals: http://www.science.calwater.ca.gov/psp/psp_package_2004.html
 - 2006 PSP funded proposals: http://www.science.calwater.ca.gov/psp/psp_package_2006.html
 - 2007 Supplemental PSP funded proposals: http://www.science.calwater.ca.gov/psp/psp_package_2007.html

D. Funding for this PSP

Approximately \$8 million is targeted for this focused solicitation from The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Prop 84). Funds have been allocated to the Science Program for these purposes.

II. Priorities of this Proposal Solicitation Package (PSP)

A. Preamble

The Priority Research Topic List was developed by a Topic Selection Panel through the careful consideration of broad Science Program needs and objectives. The geographical area of interest is the Bay-Delta System (Figures 1 and 2). While viewing the Topic List, potential applicants should keep in mind several project aspects the Science Program considers areas of great need that would add high value:

- Interdisciplinary Projects Interdisciplinary studies are crucial to extract the knowledge needed for management to answer extremely complex questions about a correspondingly complex Bay-Delta system, whose issues are inherently interconnected across multiple disciplines of study. Additionally, from a programmatic standpoint, interdisciplinary studies typically cut across multiple Delta Science Program needs, thus maximizing the use of scarce funds.
- Analysis, Integration and Synthesis of Existing Information The Bay-Delta system has
 a strong history of monitoring and research that has resulted in a wealth of accessible
 information. However, much of this information remains only partially analyzed. A very
 cost-effective way to provide Bay-Delta resource managers and policy-makers needed
 information is to analyze, integrate, and synthesize existing information across data-sets in
 new ways.
- Collaborative Proposals The Science Program encourages applicants from different institutions to work together on proposals. Collaborative approaches have been identified as a means of strengthening communication among different institutions; this communication can last well beyond the course of a single study and lead to further collaborative projects.
 Collaborative proposals typically involve applicants and institutions with different strengths and expertise, resulting in stronger interdisciplinary projects.
- Matching Funds Because the Delta Science Program has limited funds, proposals that can demonstrate they will use other funding sources (matching funds, cost sharing, in kind services, etc.) to leverage Science Program funds will have a greater likelihood of being selected over projects that do not have matching funds.

Each of the topics in the Priority Research Topic List (below) comprises two sections:

- 1. the **need**, i.e. importance and relevance, for the research tied to specific Council programs so that outcomes from the research can be directly tied to a management/policy need;
- 2. **possible questions** that define some of the unknowns that the research needs to clarify or answer as it relates to the need as stated above.

All proposals must address at least one of the topic needs. Cross-cutting proposals that address more than one topic need and study question are encouraged. Proposals that address a topic need through additional study questions not present in the Topic List are also encouraged because the Science Program wishes to stimulate creative thinking and new ideas. All proposals should address the need as directly and clearly as possible.

B. Priority Research Topic List

Topic 1: Native Fish Biology and Ecology

Need: One of the goals of the Sacramento-San Joaquin Delta Reform Act of 2009 is to provide for sustainable management of the Delta ecosystem. A key element of a healthy ecosystem is protection and recovery of populations of native fishes that depend on the San Francisco estuary. In spite of considerable scientific progress, many uncertainties remain about the basic life history, behavior, and population structure of these fishes, and about the present and potential future factors that affect their distribution and abundance. Focused and innovative basic science investigations are needed to address these uncertainties. This research should be clearly aimed at informing conceptual and numerical modeling applications and management and restoration strategies. Research topics include migration and spawning behavior, feeding and diets, adaptations to local habitats, and physiological tolerances to key environmental stressors in a changing estuary. Fish species of special interest include delta smelt, longfin smelt, sacramento splittail, green and white sturgeon, chinook salmon, and steelhead.

Possible questions to be addressed by this research:

- How do native migratory fishes navigate through the San Francisco estuary? What factors affect their migratory behavior? What are the management implications?
- What is the spawning behavior of native fish species, and where do they spawn? How might climate change and management actions affect spawning?
- What are the physiological tolerances and adaptive traits of native fish species that determine their resilience to existing and emerging stressors?
- How do habitat attributes such as geometry, water flow, temperature, turbidity, contaminants, presence of predators, and food quantity and quality affect abundance and distribution of native fishes in the estuary? Is there evidence for important antagonistic, additive, or synergistic effects of multiple habitat attributes on native fishes?
- How do connectivity between different habitat types and the geographic extent and arrangement of habitats affect the abundance and distribution of native fishes in the San Francisco estuary? What are the implications for management and restoration activities?

Topic 2: Food Webs of Key Delta Species and their Relationship to Water Quality and other Drivers

Need: Food webs in the Bay-Delta have undergone substantial changes in the past few decades. The composition of the biota within these new and emerging food webs needs to be documented and understood more thoroughly. Particularly important are the effects of variable and changing water quality from contaminants, sediments, and nutrient inputs. Of emerging concern are climate change effects on water temperature, salinity, and other water quality parameters that may affect aquatic food webs within the Bay-Delta. Fundamental research is needed to elucidate these inter-dependencies in more detail, yielding information that will inform management actions to protect ecological processes as well as threatened and endangered species, and reduce the impacts of non-native species.

Possible questions to be addressed by the research:

- What are the roles of native and non-native species in primary, secondary, and tertiary production in Bay-Delta food webs?
- How has nutrient and sediment loading into rivers entering the Delta affected aquatic food webs within the main aquatic ecosystems of the Delta?
- What roles do key contaminants and/or nutrients play in determining the structure of aquatic food webs within the Bay-Delta, and to what extent do they quantitatively affect populations of key Bay-Delta species?
- What are other critically important drivers of food webs now and in the near future? For example, how will climate change, increasing human population growth and urbanization, and changes in the local agricultural industry affect water flows, water quality parameters, and critical food webs?

Topic 3: Coupled Hydrologic and Ecosystem Models

Need: Hydrodynamic, sediment, particle tracking, and water quality models need to be coupled with ecosystem models such as those for native species and Bay-Delta and riverine food web dynamics to better inform management planning and operations. Where appropriate, model developers should consider building on existing conceptual and quantitative models. Potential model applications include determining flow requirements for aquatic species and assessing potential outcomes of water management alternatives. Progress is needed in linking models that provide information on discharge, water velocities, flow paths, water quality, residence time, and inundation patterns with ecosystem models that simulate key ecosystem attributes such as nutrient uptake, rates of primary and secondary production, habitat responses to inundation, and fish behavior, growth, and predation. Ecosystem modeling could also be focused on food webs, predator-prey interactions, and nutrient availability effects on production dynamics.

Possible questions to be addressed by the research include:

 How are hydrodynamic conditions, water quality, primary and secondary production, and food web dynamics linked within aquatic ecosystems of the Delta and its tributaries and floodplains?

- What are flow requirements throughout the annual hydrograph for sufficient habitat configuration for native fish species?
- How are habitat requirements for aquatic organisms distributed spatially under different river flow regimes, tidal excursions, alternative water storage and conveyance scenarios, and climate change scenarios?
- How will direct or indirect losses of organisms from export pumping and barrier operations be affected by altered flow regimes, proposed conveyance modifications, or sea level rise projections?

Topic 4: Water and Ecosystem Management Decision Support System Development

Need: The Bay-Delta ecosystem and water managers and policy-makers need tools that translate state-of-the-science understanding of hydrodynamics and ecological functions into effective planning and management. These decision support systems should include visualization components that facilitate the communication of the complexity and interconnectedness of ecological and social systems and allow for assessment of system response to management alternatives along with changing natural conditions. Resource managers need tools to: 1) evaluate the relative merits of alternatives using scientific information developed across a range of temporal and spatial scales; and 2) characterize and explore potentially important ecological and resource allocation trade-offs and the implications of various alternatives. Decision support tools that operate in a desktop mode and that integrate disparate aspects of the system (physical conditions, ecological conditions, socioeconomic factors) to promote more rational and transparent decision-making are particularly desirable. Focused research into the usefulness of particular tools will be helpful, but emphasis will be given to those efforts that integrate emerging tools into a system of effective communication involving managers, scientists, policy-makers, and tool developers.

Possible questions to be addressed by the research include:

- What approaches best translate scientific understanding into policy-relevant information that both policy-makers and scientists will trust?
- What methods can be used to effectively integrate physical and biological information with socioeconomic factors for clear communication to non-scientist decision-makers for use in decision-making under adaptive management?
- What tools best address critical dynamic processes such as river flow, volume, velocity, residence time, water quality, time series, projected changes in flood stage and timing, and flow management options?
- What tools best enable advanced graphic and presentation technologies that enable simultaneous visualization of spatial and temporal variation in multiple physical and biological properties and accurately convey uncertainty?

III. Proposal and Submittal Requirements

A. Overview

Successful proposals are those whose applicants thoroughly and accurately complete the application forms and follow the prescribed format for the proposal document. All proposals must be submitted electronically through the PSP website to be considered for funding; hard copies of proposals will not be accepted. Proposals will be accepted through the website beginning December 18, 2008 through June 30, 2010. Before applying, please make sure you are eligible to receive funds by carefully reading the information below. If you need assistance, please contact the helpline at 916-445-5838 or via e-mail at help@solicitation.calwater.ca.gov.

B. Eligibility

Any public agency or non-profit organization capable of entering into a grant agreement with the State or Federal government may apply. This includes, but is not limited to: (1) local agencies; (2) private non-profit organizations; (3) tribes; (4) universities; (5) State agencies; and (6) Federal agencies. Individuals and private for-profit entities are not eligible for this PSP, and should not apply. The applicant organization must agree to the General Terms and Conditions of Delta Science Program grants (Attachment 1).

C. Confidentiality and Conflict of Interest

Applicants should be aware that the titles and executive summaries of all proposals will be available for viewing on the Science Program website shortly after the solicitation has closed. Comments from the review process may be posted on the website and distributed as part of the public comment process. After the Delta Stewardship Council takes formal action on the final funding recommendations, the complete text of all funded proposals will be posted on the Science Program website. By submitting a proposal, the applicant agrees to waive any right to confidentiality of the proposal. For more information on confidentiality, please contact the PSP helpline.

Both applicants and individuals who participate in reviews of submitted proposals are bound to State and Federal conflict of interest laws. Any individual who has participated in planning or setting priorities for this PSP or who will participate in any part of the grant development and negotiation process on behalf of the public is ineligible to receive funds or personally benefit from funds awarded through this PSP. To help the Science Program manage potential conflicts, applicants should use the PSP Conflict of Interest Form (section III.E. below) to fully disclose individuals who participated in writing or who will benefit from the project if funded. Individuals who have participated in development of this PSP should not submit proposals.²

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¹ Although the Science Program will not post proposal documents for unfunded proposals on their website, all submitted proposals, whether funded or not, are considered public documents and are subject to disclosure under California law.

² Failure to comply with these laws, including business and financial disclosure provisions, will result in the proposal being rejected and/or any subsequent grant being declared void. Before submitting a proposal, applicants are urged to seek legal counsel regarding potential conflict of interest concerns that they may have and

Scientific reviewers and individuals participating in review panels are also subject to the same conflict of interest laws. Proposals may be reviewed and discussed by members of the public under public disclosure requirements. Applicants should also be aware that certain State and Federal agencies may submit proposals that will compete for funding. Employees of State and Federal agencies may participate in the review process as scientific/technical reviewers but are subject to the same State and Federal conflict of interest laws.

D. How to Submit a Proposal

Proposals will be considered for funding only when all four steps outlined below have been completed by the application deadline. If you need assistance, you may contact the helpline at 916-445-5838 or via e-mail at help@solicitation.calwater.ca.gov.

1. User Registration

Prior to initiating a proposal, you must complete an online registration process available through the PSP solicitation website at https://solicitation.calwater.ca.gov, unless you are already registered. Registration does not obligate the registrant to submit a proposal, but you must be registered to submit your proposal and access detailed PSP information. As part of the registration process, you will choose a user ID and password that will let you access proposal forms and submit your proposal document. Additionally, all Co-Project Investigators must be registered through the website. Registration will also facilitate communication between Science Program staff and project staff.

2. On-line Forms

The application forms available on the website must be completed before your proposal can be considered for funding. Summary information on each form can be found below in section III.E On-line Application Forms of this document. Detailed instructions for completing each form can be found on the forms themselves.

3. Proposal and Budget Composition, Upload, and Verification

Proposals may be prepared using the word processing software of your choice. Proposal documents and detailed budgets must be converted to a PDF prior to uploading to the website. Instructions for conversion of files to PDF and uploading are available through the help section of the PSP solicitation website.

requirements for disclosure. Applicable California statutes include (i.e., are not limited to) Government Code Section 1090 and Public Contract Code Sections 10365.5, 10410, and 10411.

4. Upload or Fax Signature Page

In order for your proposal package to be complete, the PSP signature page must be generated, printed, signed and uploaded to the website. The signature page can be generated and uploaded on the Signature Page Form. The generated document should be printed, signed by the signatory for the applicant organization, and then scanned so that it can be uploaded. Once the signed document has been uploaded, and all other forms of the package are completed, the compiled proposal will be viewable. If scanning facilities do not exist you can fax the document to the number provided on the signature page.

5. Proposal Verification

Once the forms have been completed, and the budget, proposal, and signature page documents have been uploaded to the website, you will be asked to verify that the proposal package is ready for review. To verify, view the "printable" Compiled Proposal and verify that the information represented is accurate. This is the document that will be given to reviewers. If it is correct, please check the "Proposal Complete" box. If it is not correct, please make the necessary adjustments to the forms and then re-compile your proposal for verification. Proposals **must** be verified by the submittal deadline.

Please note, only verified proposals will be reviewed for funding.

E. On-line Application Forms

Summary information on each of the on-line application forms is provided below. Detailed information and instructions can be found on the forms themselves. The forms can be accessed by logging into the PSP solicitation website at https://solicitation.calwater.ca.gov. Forms may be completed incrementally; you do not need to complete the process during a single session, and you may therefore provide information over multiple sessions as needed.

The following on-line forms must be completed in order to successfully submit a proposal:

- Project Information and Executive Summary
- Contacts and Project Staff
- Conflict of Interest
- Task and Budget Summary
- Detailed Budget Upload and Justification
- Schedule of Deliverables
- Proposal Document Upload
- Signature Page
- Letters of Support (optional)

Project Information and Executive Summary — This form gathers basic information about the project, and requires you to insert an Executive Summary for your project. The Executive Summary should be a concise and informative stand-alone description of your proposed project.

Contacts and Project Staff — This form provides information on the principal project participants, including consultants, subcontractors, and vendors. This information is linked to and supports other forms, including the Conflict of Interest and Task and Budget Summary forms. All Co-Project Investigators (PIs) must be registered with the website.

Conflict of Interest — This form assists the Science Program in assigning reviewers to avoid conflicts of interest between applicants, co-PI's, or subcontractors and reviewers (see section III.C. Confidentiality and Conflict of Interest for policy details).

Task and Budget Summary — List major tasks and the time to complete them (in months from the date the project's grant agreement is executed), and a budget total for each task. Because funding may be awarded for only a portion of the proposal, you should organize by tasks and subtasks that may be funded separately. The total of all task budgets should equal the total entered in the Project Information form and your uploaded Detailed Budget (described below).

Detailed Budget Upload and Justification — This form comprises three sections:

Section 1. Budget Format and Upload - The first section provides information on what should be included in your detailed budget such as costs and pay rates of personnel, information on subcontractors, benefits, equipment, travel, operating expenses, etc. Use this information to construct a budget in the software of your choice. Some guidance on the budget, such as breaking it down into tasks, is included in this form and required in the format, but many format decisions are left up to you. However, if it is not abundantly clear to reviewers what project costs are commensurate with what efforts and benefits, the proposal may receive a poor review and be denied funding. When you complete your budget, you must convert it to a PDF and upload it to the website. The detailed budget total should exactly match the budget totals in the Task and Budget Summary and the Project Information forms. Projects can be multi-year efforts, but may not exceed three years.

Section 2. Budget Justification - This section allows you to upload a separate budget justification text document, if needed, to fully explain/justify the significant costs represented in the uploaded budget. Alternatively, you can include the justification in your proposal text in a clearly defined budget justification section.

Section 3. Cost Share/Matching Funds - This section provides an opportunity to upload a text document that describes any cost-share or other matching funds to support your proposed project. Dollars provided to the project via cost share/matching funds must also be identified in the proposal text.

Schedule of Deliverables — List key deliverables and the time to complete them (in months from the date the project's grant agreement is executed). The required minimum deliverables are:

- 1- page project summary for public audience at beginning of project
- Semi-annual Progress Reports
- Final Progress Report
- 1- page project summary for public audience upon project completion
- Management Implications of project findings

- Project closure summary report or copy of draft manuscript(s)
- Presentation at Bay-Delta Science Conference
- Presentations at other events at request of Delta Science Program staff
- Copy of all published material resulting from the grant

Proposal Document Upload — This form allows you to upload your PDF version of your proposal document (described below) to the PSP solicitation website.

Signature Page — Your proposal will not be considered complete until a signature page is received. The signature page must be signed by a representative (signatory) of your organization or agency who is authorized to enter into a contractual agreement with the State of California. Print the generated page from the website, have it signed, scan it and upload it to the website. If scanning facilities are not available you can fax it to the number listed on the form. The signed signature page must be uploaded/received by the proposal submittal deadline. This page is used to verify that you intended to submit your proposal and that you agree to the conditions of the grant solicitation and review process.

F. Proposal Document Outline and Format

Proposal Document Outline

The proposal document comprises the written text and images that will be uploaded to the website via the Proposal Document Upload form described above. Successful proposals will be well-written, accurate, and concise. The proposal document should follow the outline below. Make sure all the components within the outline are clearly incorporated and identified in your proposal document to help reviewers evaluate your proposal; a table of contents in the proposal document might facilitate this review process. You should read the Proposal Review and Selection section of this PSP (section IV) prior to writing your proposals to familiarize yourself with the criteria that will be used for proposal evaluation.

- 1. Project Purpose Describe the purpose of your project. This section should include:
 - the identification of the problem, question(s) or critical unknown(s) that your proposed effort is designed to address;
 - your project goals, objectives, and how they relate to the problem, question(s) or critical unknown(s) you propose to address;
 - the clearly stated hypothesis you will be testing to achieve your goals and objectives;
 - a description of relevant studies or other information that documents the problem and unknowns, substantiates the goals and objectives, and includes the ways this problem has been addressed locally and elsewhere.
- 2. Background and Conceptual Models This section should include all necessary background information not covered in the Project Purpose section above. A conceptual model should be provided that clearly explains the underlying basis of the knowledge that will support the proposed work. Models can be presented graphically or as narrative. A description of the project's physical setting, with maps or photographs if appropriate, should be included.

- 3. Approach and Scope of Work Describe the approach you will undertake to address your project's objectives. Include specific information about methods and techniques, equipment and facilities, data collection, statistical analysis and quality assurance procedures as applicable. Provide narrative detail about the tasks and schedule listed on the Task and Budget Summary form (on-line). Clearly indicate which tasks are contingent upon other tasks, and which tasks can be done separately; this information is necessary in case only part of the project is funded. Elaborate on expected deliverables that your project will produce and submit. Deliverables can include presentations, workshops, seminars, educational programs, project summaries, websites, reports, and publications. This section should fully describe the proposed deliverables you list in the Schedule of Deliverables form (on-line). (Some examples of proposal approaches broken down by task are evident in successful proposals from the Science Program 2006 PSP available through the website at: http://www.science.calwater.ca.gov/psp/psp_package_2006.html.)
- 4. Feasibility Show how your proposed project is both feasible and appropriate for the proposed work. Demonstrate how the work you've outlined in your proposal can be completed within no more than three years given reasonably foreseeable constraints (e.g. weather conditions or permitting). Thoroughly address any contingencies or requirements such as dependence upon the outcome or timing of other projects or programs, upon natural or operational conditions, and upon environmental compliance or permitting processes. Explain the current status of each permit or agreement, as well as any other constraints that could impact the schedule and your ability to complete your project. Describe how project management decisions will be coordinated.

5. Relevance to the Delta Science Program. This section comprises two parts:

Relevance to this PSP — Describe how your proposal directly meets one or more of the needs identified in the Priority Research Topic List of this PSP. Identify all "possible questions to be addressed by the research" from the Topic List that your proposal addresses and incorporates. Summarize other questions your proposal may answer that, although not found in the Topic List, address a need from the Topic List. Describe how your proposal meets other priorities described in section II of this PSP such as the need for synthesis, integration, and collaboration.

Relevance to Delta Science Program Issues Outside this PSP — If applicable, explain how your proposal addresses Science Program needs not mentioned in this PSP. Describe how the project will link back to or complement larger Delta Stewardship Council goals and efforts. Identify any synergistic, Delta-wide benefits, including how your proposal complements projects or programs in other areas within the Bay-Delta system. Explain any relationship between your proposal and any CALFED Bay-Delta Program or Delta Stewardship Council actions or investments.

6. Qualifications — Briefly describe how the participants identified in your Contacts and Project Staff form (on-line) provide the range of experience and expertise needed for your project. (If appropriate, highlight relevant field experience, completed projects, published reports, or other materials not adequately captured in the Contacts and Project Staff form). Specify individual roles and responsibilities for technical, administrative, and project management activities that are not described in the Contacts and Project Staff form. Describe the organizational structure for the staff and other resources. For projects using consultants or subcontractors, briefly describe how

they were selected and why. A subcontractor role exceeding a quarter of the total project budget should be fully explained and clearly justified.

7. Literature Cited — All proposals must include a list of references for all research studies, project reports, scientific reports, or other supporting information cited in the proposal. Reference information should follow accepted scholarly practices.

Proposal Document Format

Keep in mind these formatting considerations in order to successfully upload and submit your proposal document.

Page limits — The proposal text should be no more than 20 pages, excluding literature cited. You may *not* include attachments; it is essential that you present all critical information (including figures and tables) in the body of your proposal.

File size — The help section of the solicitation website includes links to tools to help you manage the size of the file containing the proposal document. Please contact the helpline early if you anticipate submitting a file greater than 10 MB. Large files are difficult to upload and sometimes cannot be viewed readily by reviewers or others who lack high-speed Internet connections.

Format — Body text must be 12 point in a readable typeface; text in tables and figures must be no smaller than 10 point in a readable typeface. Headings must be at least 14 point, but no larger than 18 point, bold typeface, flush left. Page margins must be between three-quarters and one inch on all sides. All proposal pages, including diagrams, must be readable when printed on 8.5 x 11-inch paper.

Submission Format — You must submit your proposal as a PDF file.

Maps, Photographs, Figures, and Tables — Each map, photograph, figure, or table needs to be individually numbered and clearly titled. If you need help in incorporating these graphics into your proposal for submission as a PDF, please ask for assistance by e-mailing us at help@solicitation.calwater.ca.gov

Page Numbering — Each page of the proposal needs to be numbered sequentially.

G. Collaborative Proposals

Grant agreements will be made with only one eligible lead applicant, so the proposal needs to clearly state which organization will sign the agreement. This organization will be responsible for payments, reporting, and accounting. Other collaborators in the project will typically be subcontractors to the lead applicant (organization) but should be identified, if known, in the application forms and proposal document. You must document that the lead institution will be able to execute all subcontracts in a timely manner. Your proposal must explain how the collaboration will work, including how decision-making authority and liability is to be allocated.

Your proposal must also identify the tasks or sub-tasks that will be performed by the different entities. The names of known subcontractors must be identified. When subcontractors are identified, explain briefly how they were selected, and why. (The Science Program is aware that some subcontractors may not be known until after the proposal is selected for funding and subcontracts are put out for competitive bidding, as required by California State law.) You should include the estimated costs of subcontract work and any costs for managing subcontractors in your proposal. A subcontractor role exceeding a quarter of the total project budget should be fully explained and clearly justified.

H. Deadline

The deadline for completing, submitting and verifying your proposal to the solicitation website is 5:00 p.m. Pacific Standard Time on June 30, 2010. Proposals submitted after this time will not be considered. You are strongly advised to submit your proposal well before the deadline; the deadline is firm and will not be extended due to slow connection speeds or last-minute questions that typically occur in the hours preceding the deadline.

IV. Proposal Review and Selection

A. Review Process Summary and Schedule

The proposal review process and schedule, summarized in Figure 3, involves three separate reviews. All complete proposals will undergo administrative review, external scientific review, and review by a Final Review Panel. The Final Review Panel will make recommendations to the Delta Lead Scientist who, following public comment, will make final recommendations on funding to the Delta Stewardship Council for final approval.

B. Administrative Review

Science Program staff will conduct an initial review of proposals to ensure the following:

- all proposal components have been completed by the submission deadline, including all
 on-line application forms and associated uploaded documents including the proposal
 document and detailed budget (see section III.D. of this document above);
- proposals are from eligible applicants;
- proposals are responsive to the solicitation's priorities;
- applicants have an acceptable past performance, including effective management of grants previously received from the Science Program.

C. External Scientific Review

Three independent external reviewers will be selected to review each proposal based on their expertise in the subject areas of the proposal. The reviewers will evaluate submissions using a set of criteria that combines classic scientific review questions and elements designed by the Science Program to address common issues. The subject experts will also make overall recommendations to the Final Review Panel as to whether proposals are superior, above average, sufficient, or

inadequate, and explain their recommendations. The external scientific reviewers will thoroughly explain their reviews and base them on the following criteria:

Project Purpose

- Are the goals, objectives, hypotheses, and questions clearly stated and internally consistent?
- Is the idea timely and important? Is the study justified relative to existing knowledge?
- Are results likely to add to the base of knowledge? Is the project likely to generate novel information, methodology, or approaches?

Background

- Is a conceptual model clearly stated in the proposal, and does it explain the underlying basis for the proposed work?
- Is all other information needed to understand the basis for the proposed work included and well documented?

Approach

- Is the approach well designed and appropriate for meeting the objectives of the project?
- Is it clear who will be performing management tasks and administration of the project, and are resources set aside to do so?
- Are products of value likely from the project? Is there a plan for widespread and effective dissemination of information gained from the project? Are contributions to larger data management systems relevant and considered?

Feasibility

- Is the approach fully documented and technically feasible?
- What is the likelihood of success?
- Is the scale of the project consistent with the objectives and within the grasp of the authors?

Budget

- Is it clear how much each aspect of the proposed work will cost, including each task, salaries, equipment, etc.?
- Is the budget reasonable and adequate for the work proposed?
- Are matching funds used to leverage Delta Science Program funds?

Relevance to the Delta Science Program

- How well does the proposal address the priorities stated in the PSP?
- Does the proposal clearly and directly address one or more of the topics in the Priority Research Topic List?
- Does the proposal address other priorities stated in the PSP such as integration, syntheses, use of existing information, collaborations, or multiple disciplines?
- Will the information ultimately be useful to Delta resource managers and policy-makers?

Qualifications

- What is the track record of the authors in terms of past performance?
- Is the project team qualified to efficiently and effectively implement the proposed project?
- Do they have available the infrastructure and other aspects of support necessary to accomplish the project?

Overall Evaluation Summary Rating

• A brief explanation of a summary rating.

D. Final Review Panel (FRP) Review

The role of the FRP is to prepare funding recommendations to the Delta Lead Scientist based on the evaluation of each proposal's technical quality and responsiveness to the PSP priorities. The FRP will consist of technical experts whose expertise spans the range of topics covered by the submitted proposals. The Lead Scientist (or designee) will serve as the non-voting chairman for the panel with primary responsibility for assuring that the discussion is balanced, fair, and comprehensive. The FRP will consider all external reviewer comments in their overall evaluation of the proposals. The result of these discussions will be a panel rating of superior, above average, sufficient, or inadequate, along with clear evaluation statements. The panel's funding recommendations will be based on the quality of the proposal and the amount of available funds. The FRP may also recommend conditions for funding such as modifications of tasks and products. All funding recommendations and reviews will be made available for public comment. No proposals rated inadequate by the panel will be recommended to the Delta Lead Scientist for funding.

E. Delta Stewardship Council Review and Action

Following public comment, the Lead Scientist will make final funding recommendations to the Delta Stewardship Council (Council) for final funding approval. The Council may, at their discretion, recommend and/or award a package of grants determined to be most responsive to the goals and objectives of the Sacramento-San Joaquin Delta Reform Act of 2009.

F. Signed Grant Agreements

The process of finalizing grant agreements will begin as soon as projects are approved by the Council. Depending on the complexity of each project, the institution receiving the funds, and review panel requirements, it will likely take 2 to 6 months to develop and finalize the grant agreements for successful proposals. Applicants shall not commence work on their projects until a funding agreement is fully executed. Work performed prior to the full execution of a funding agreement is done solely at the risk of the applicant and without expectation of reimbursement. General terms and conditions for grants are provided in Attachment 1.

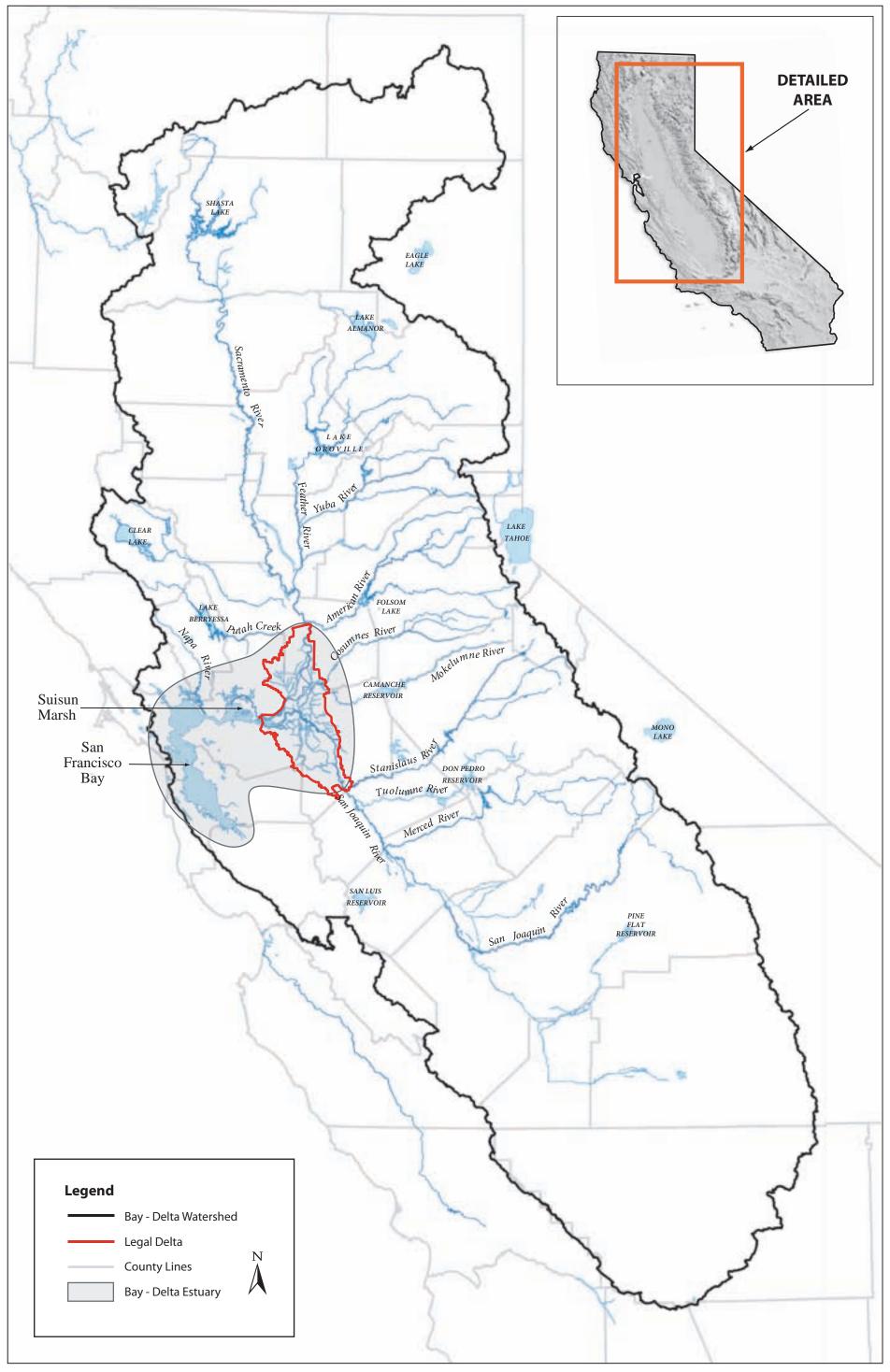


Figure 1 - The Bay-Delta System

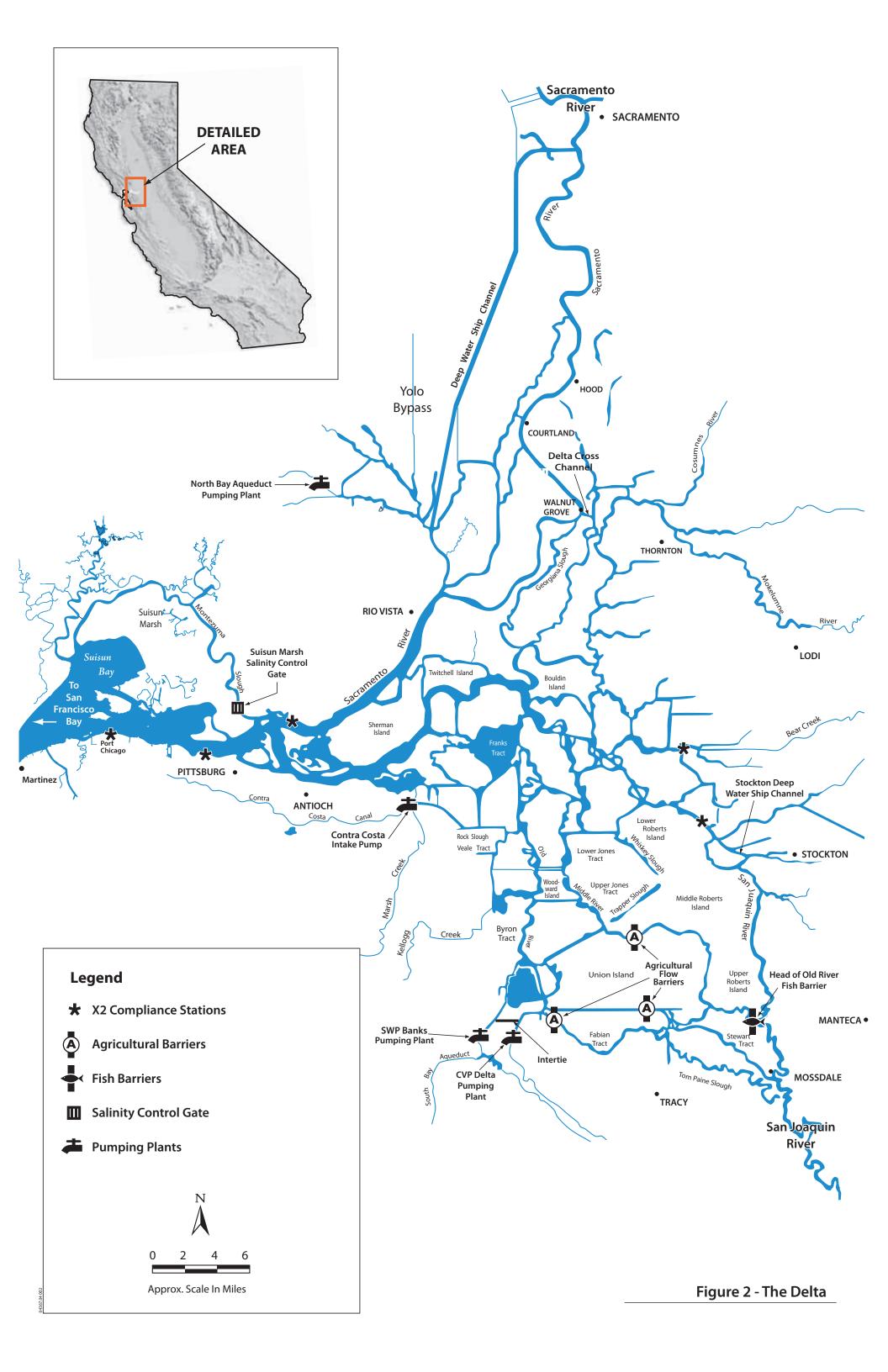
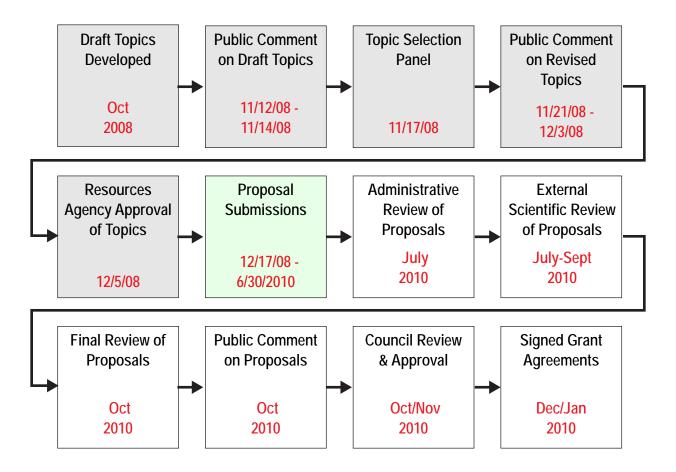


Figure 3 2010 Delta Science Program Focused PSP Schedule



Attachment 1 Terms and Conditions for Funded Grants

Invoicing and Payment Provisions

1. Payment in Arrears: Payment shall be made in arrears based on receipt of a complete, properly documented and accurately addressed invoice or payment request.

2. Invoicing:

2.1 Invoices shall include the Agreement Number and one copy shall be submitted not more frequently than monthly in arrears to:

Delta Science Program
Delta Stewardship Council
650 Capitol Mall, 5th Floor
Sacramento, CA 95814
Attn: Accounting Department

- 2.2 Payment of any invoice will be made only after receipt of a complete and accurate invoice or payment request. All invoices must be approved by the Delta Science Program Technical Grant Manager. Failure to use the address exactly as provided above may result in return of the invoice or payment request to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail.
- 2.3 Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or State laws, rules, or regulation, or which may require any rebates to the federal government, or any loss of tax-free status on State bonds, pursuant to any federal statute or regulation.
- 2.4 Notwithstanding any other provision of this Agreement, the Grantee agrees that the Resources Agency may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project in accordance with the Scope of Work. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
- 2.5 The invoice shall contain the following information:
 - 2.5.1 The word "INVOICE" should appear in a prominent location at the top of page(s);
 - 2.5.2 Printed name of the Grantee;
 - 2.5.3 Business address of the Grantee, including P.O. Box, City, State, and Zip Code;
 - 2.5.4 The date of the invoice;
 - 2.5.5 The number of the Grant Agreement upon which the claim is based; and
 - 2.5.6 The time period covered by the invoice, i.e., the term "from" and "to";

- 2.5.6.1 The method of computing the amount due.
- 2.5.6.2 Supporting documentation of tasks accomplished
- 2.5.7 Original signature of Grantee (not required of established firms or entities using preprinted letterhead invoices).

3. Budget Contingency Clause

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the Delta Stewardship Council to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Grantee to reflect the reduced amount.

4. Line Item Budget

For the purposes of this Grant Agreement, the Budget Summary, is the line item budget for this grant.

5. Budget Line Item Flexibility

- 5.1 <u>Line Item adjustment(s)</u>. Subject to the prior review and written approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs. Line item adjustments in excess of 15% of the agreement total, or a cumulative maximum of \$250,000, shall require an amendment to the Grant Agreement.
- 5.2 <u>Procedure to Request an Amendment</u>. Please refer to the Science Program Guidelines for Grant Amendment Requests document.

6. Payment of Project Costs

The Grantee agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Grantee on a timely basis.

General Terms and Conditions for Delta Stewardship Council Grants

- 1. <u>Approval</u>: This Grant Agreement is of no force or effect until signed by both parties. Grantee shall not commence work under this Grant Agreement until such signatures have been obtained. Work performed prior to having a fully executed Grant Agreement is performed at the Grantee's risk, with no expectation of reimbursement.
- **2. Amendment:** No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties.
- **3.** <u>Assignment</u>: This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the Delta Stewardship Council/Delta Science Program in the form of a formal written amendment.
- **4.** Audit: Grantee agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
- 5. <u>Indemnification</u>: Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
- **6.** <u>Disputes</u>: Grantee shall continue with the responsibilities under this Grant Agreement during any dispute.
- 7. Termination For Cause: The grant agreement may be terminated by written notice at any time of this Grant Agreement prior to completion of the Project, at the option of the Delta Stewardship Council/Delta Science Program, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Delta Stewardship Council/Delta Science Program. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the Delta Stewardship Council/Delta Science Program an amount equal to the amount of grant

funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.

- **8.** <u>Independent Status</u>: Grantee, and the agents and employees of Grantee, in the performance of this Grant Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
- 9. Non-Discrimination Clause: During the performance of this Grant Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Grant Agreement.

- **10.** <u>Compensation</u>: The compensation to be paid Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance of this Grant Agreement, including travel, per diem, and taxes, unless otherwise expressly so provided.
- **11. Governing Law:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- **12.** <u>Travel</u>: Any reimbursement for necessary travel and per diem shall be at rates specified by the California Department of Personnel Administration for similar employees (www.dpa.ca.gov/jobinfo/statetravel.shtm). Federal agency grantees can invoice for travel reimbursement at State rates, and make necessary arrangements with their agency to be personally reimbursed for expenses at the available federal rate.
- **13.** <u>Conflicts Of Interest</u>: Grantee shall comply with all applicable State laws and rules pertaining to conflicts of interest including, but not limited to, Government Code section 1090, Public Contract Code sections 10410 & 10411, and Public Contract Code section 10365.5.
- **14.** <u>Unenforceable Provision</u>: In the event that any provision of this Grant Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Grant Agreement have force and effect and shall not be affected thereby.

- **15.** <u>Drug-Free Workplace Requirements</u>: Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a drug-free workplace;
 - 3) Any available counseling, rehabilitation and employee assistance programs; and,
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) Receive a copy of the company's drug-free workplace policy statement; and,
 - 2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State agreements if the department determines that the Grantee failed to carry out the requirements as noted above.

- **16.** <u>Withholding Of Grant Disbursements</u>: The Delta Stewardship Council/Delta Science Program may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.
- **17.** <u>Domestic Partners</u>: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

Special Terms and Conditions for Delta Science Program Grants

1. Grantee Responsibilities and State Requirements

- 1.1 The Grantee has full responsibility for the conduct of the project or activity supported under the Grant Agreement and for adherence to the award conditions. Although the Grantee is encouraged to seek the advice and opinion of the Delta Science Program on special problems that may arise, such advice does not diminish the Grantee's responsibility for making sound scientific and administrative judgments and should not imply that the responsibility for operating decisions has shifted to the Delta Science Program. The Grantee is responsible for notifying the Delta Science Program about: (1) any allegation of research misconduct that it concludes has substance (2) any significant problems relating to the administrative or financial aspects of the award.
- 1.2 By acceptance of this award, the Grantee agrees to comply with the applicable State requirements for grants and to the prudent management of all expenditures and actions affecting the award. Documentation for each expenditure or action affecting this award must reflect appropriate organizational reviews or approvals that should be made in advance of the action. Organizational reviews are intended to help assure that expenditures are allowable, necessary and reasonable for the conduct of the project, and that the proposed action:
 - 1. is consistent with award terms and conditions;
 - 2. is consistent with Delta Science Program and grantee policies;
 - 3. represents effective utilization of resources; and
 - 4. does not constitute a significant project change.

Nothing in this article shall be construed to require administrative reviews or documentation that duplicates those already required by existing organizational systems.

1.3 The Grantee is responsible for ensuring that the Lead Investigator(s) or Project Director(s) receives a copy of the award conditions, including: the award letter, a copy of the Grant Agreement, and any subsequent changes in the award conditions. This provision does not alter the Grantee's full responsibility for conduct of the project and compliance with all award terms and conditions.

2. Publications/Acknowledgement of Support

- 2.1 Acknowledgment of Support. The grantee is responsible for assuring that an acknowledgment of Delta Science Program support is made:
 - a. in any publication (including World Wide Web pages) of any material based on or developed under this project, in the following terms:

"This material is based upon work supported by the Delta Science Program under Grant No. (Delta Science Program grant number)."

- Delta Science Program support also must be orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.
- 2.2 *Disclaimer*. The grantee is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:
 - "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Delta Science Program."
- 2.3 Copies for the Science Program. The grantee is responsible for assuring that one electronic copy or two hard copies of every publication of material based on or developed under this award, clearly labeled with the award number and other appropriate identifying information, are sent to the Science Program Technical Grant Manager promptly after publication.
- 2.4 Grantee shall notify the Delta Science Program in writing or via electronic mail at least 10 working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by the Delta Science Program's representatives.

3. Government Permits and Environmental Review

Grantee is responsible for ensuring compliance with all applicable permitting and environmental review requirements that may be required to accomplish the project described in the Scope of Work.

4. Permission for Access to Private Property

If Grantee requires access across private property, Grantee shall provide written evidence of the property owner's permission for access to the property.

5. Subcontracts

Grantee is responsible for all subcontracted work, and for compliance with all contracting laws and rules that may be applicable to it and the subcontract, including obtaining control agency approval, as may be required. Subcontracts must include all applicable terms and conditions as presented herein. For Science Program "quality control" purposes, subcontractors not specifically identified in the grant proposal must be obtained using a competitive bidding process, or non-competitive selection process, that meets basic state requirements. Grantee must provide copies of all executed subcontracts to the Delta Science Program Technical Grant Manager.

6. Reporting Requirements

Semi-annual Reports

Grantee will be required to submit a project report twice a year until the project is completed. These reports will serve as performance measures/project monitoring tools to allow determination of the success of the project in relation to its objectives and are due July 15th (covering the period of January 1-June 30) and January 15th (covering the period of July 1-December 31) each year of

the project. The report will include descriptive information such as activities performed during the period, findings, the percentage of each task completed, the deliverables produced, problems and delays encountered, etc. Financial information should also be included with this report outlining: 1) the financial status of the project (amount invoiced to the grantee and the amount invoiced to cost share partners) and 2) six month expenditure/invoice projections to enable funding availability for payment of invoices. A template for the semi-annual report is available on the Science Program website. The final report must include copies of any publications or reports produced. The final report is due on or before the scheduled project completion date.

Summary Reports

Summary reports are required in the same frequency as grantee invoices. These reports will include a brief description (1 -2 paragraphs) of the work performed, organized by task, under the invoicing period and should be sent as an email or hard copy to the Technical Grant Manager and reference the corresponding invoice number.

7. Project Presentations

Grantee agrees to present project findings at the biennial Bay-Delta Science Conference and/or other Delta Science Program workshops and symposia.

8. Site Visits

Delta Science Program staff, or its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by the Delta Science Program on the premises of the Grantee or a subcontractor under an award, the Grantee shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Delta Science Program staff or authorized representatives in the performance of their duties.

9. Equipment

Grantee Assurance. The grantee will assure that each purchase of equipment is:

- (a) necessary for the research or activity supported by the grant;
- (b) not otherwise reasonably available and accessible;
- (c) of the type normally charged as a direct cost; and
- (d) acquired in accordance with organizational practice.

10. Dispute Resolution

Any claim that the Grantee may have regarding the performance of this Grant Agreement, including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Delta Science Program Manager within thirty days of its accrual. The Delta Science Program Manager will attempt to facilitate a mutually acceptable resolution of the dispute.

11. Rights in Data

The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this

Grant are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Grantee may copyright the same, except that, as to any work which is copyrighted by the Grantee, the State reserves a royalty-free, fully paid-up, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so for a public purpose. Except for publication or other dissemination of results for education or research purposes, the Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

12. Peer Review

Delta Science Program staff may establish peer review panels to review and comment on successful applicants work product or deliverables.

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Phone: (916) 445-5825

Delta Plan

Summary: The Council's implementing legislation requires that a Delta Plan be completed and underway by January 1, 2012, and it specifies some basic criteria and processes (SBX7 1, Part 4, Chapter 1). It also requires an interim plan to guide project plan and program development until a Delta Plan is adopted. The legislation specifies that the Delta Plan should be consistent with applicable parts of several federal Acts (Coastal Zone Management Act, Reclamation Act and Clean Water Act). It requires that a state and federal coordination group be established and requires federal participation in the Delta Plan Development

Today's presentations describe the early steps needed to meet the Delta Plan requirements and schedules, and request Council approval and direction for specific actions:

- (1) initial efforts to acquire consultant help to perform project management, technical and environmental services;
- (2) introduce discussion of Coastal Zone Management Act to consider its suitability as the mechanism to achieve federal consistency with the Delta Plan;
- (3) establish a state/federal coordination group;
- (4) request federal participation in the Delta Plan development;
- (5) recommend an approach for an interim plan to ensure that early Delta activities will be consistent with long-term Delta Plan objectives.

Adequate staff resources to accomplish this work in a timely manner are an issue. Therefore, as authorized by Water Code Section 85034(e), the Executive Officer will confer with specified agencies to secure necessary interim and immediate staffing.

Fiscal Information

Not applicable

List of Attachments

Attachment 1 – Informational Timelines

Contact

Terry Macaulay
Acting Deputy Executive Officer



Agenda Item 9 – Delta Plan

April 1, 2010

Today's Requested Actions

- Ratify current process and direct staff to take primary responsibility for Delta Plan RFQ process
- Direct staff to develop a draft Interim Plan to comply with statute
- 3. Establish federal coordination group
- Request federal participation in Delta Plan development

Delta Plan Basics

SB1 requires:

- □ On or before Jan. 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals
- Comprehensive, long-term management plan that furthers the coequal goals of providing more reliable water supply for California and protecting, restoring, and enhancing Delta ecosystem
- Achieved in manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place

Further Requirements

The Delta Plan shall:

- Include subgoals and strategies to assist in guiding state and local agency actions related to the Delta
- □ Consider each of the strategies and actions set forth in the Delta Vision Strategic Plan
- Identify specific actions that state or local agencies may take

Comprehensive Delta Planning

- □ New obligation February 3, 2010
- ☐ Unprecedented & controversial
- ☐ Extensive & complex
- ☐ Required environmental review process
- ☐ Very short timeframe

Major elements to be addressed before January 2012

- ☐ Ecosystem health
- Water supply reliability
- ☐ Delta as a Place
- ☐ Infrastructure and facilities
- ☐ Flood risk reduction
- Water conservation
- ☐ Land use

Consider Inter-Related Plans:

- ☐ State, regional, local plans under development
 - ✓ Bay Delta Conservation Plan
 - ✓ SWRCB ecosystem flow criteria
 - ✓ DPC economic sustainability plan
 - ✓ DPC Land Use and Resource Management Plan
 - ✓ Central Valley Flood Protection Plan
 - ✓ More ...

Federal Consistency

- ☐ Coastal Zone Management Act or equivalent
- ☐ Section 8 of the Reclamation Act
- □ Clean Water Act

Preliminary work on Delta Plan

- ☐ To complete statutory obligations for Plan
 - ✓ Senior management staff dedication
 - ✓ Hire technical staff (5 vacancies)
 - ✓ Acquire loaned technical staff
 - ✓ Consultants RFQ process under way

Contracting Options

- Accept DWR delegated contracting process (Potential completion - May 2010)
- 2. Initiate independent Council process (Potential completion June 2011)
 - ✓ Adopt regulations (4-6 months)
 - ✓ Competitive-bid process (12 months)

Staff recommendation: Option 1

Delta Plan Timeline

Jan 25: RFQ released

Feb 23: Submittals due

March: Initial proposal review

April 1: 1st Council meeting

April 5-8: Interviews

April 12-15: Preliminary selection/negotiation

April 22-23: 2nd Council meeting

April 26: Contract approval

Requested Action for RFQ

- 1. Ratify current process
- Direct staff to take primary responsibility for Delta Plan RFQ process
- 3. Bring review of applicants and staff recommendation back to Council for review / decision

Original plan called for contract award by end of April 2010; goal is to meet timeline.



Agenda Item 9e – Interim Plan

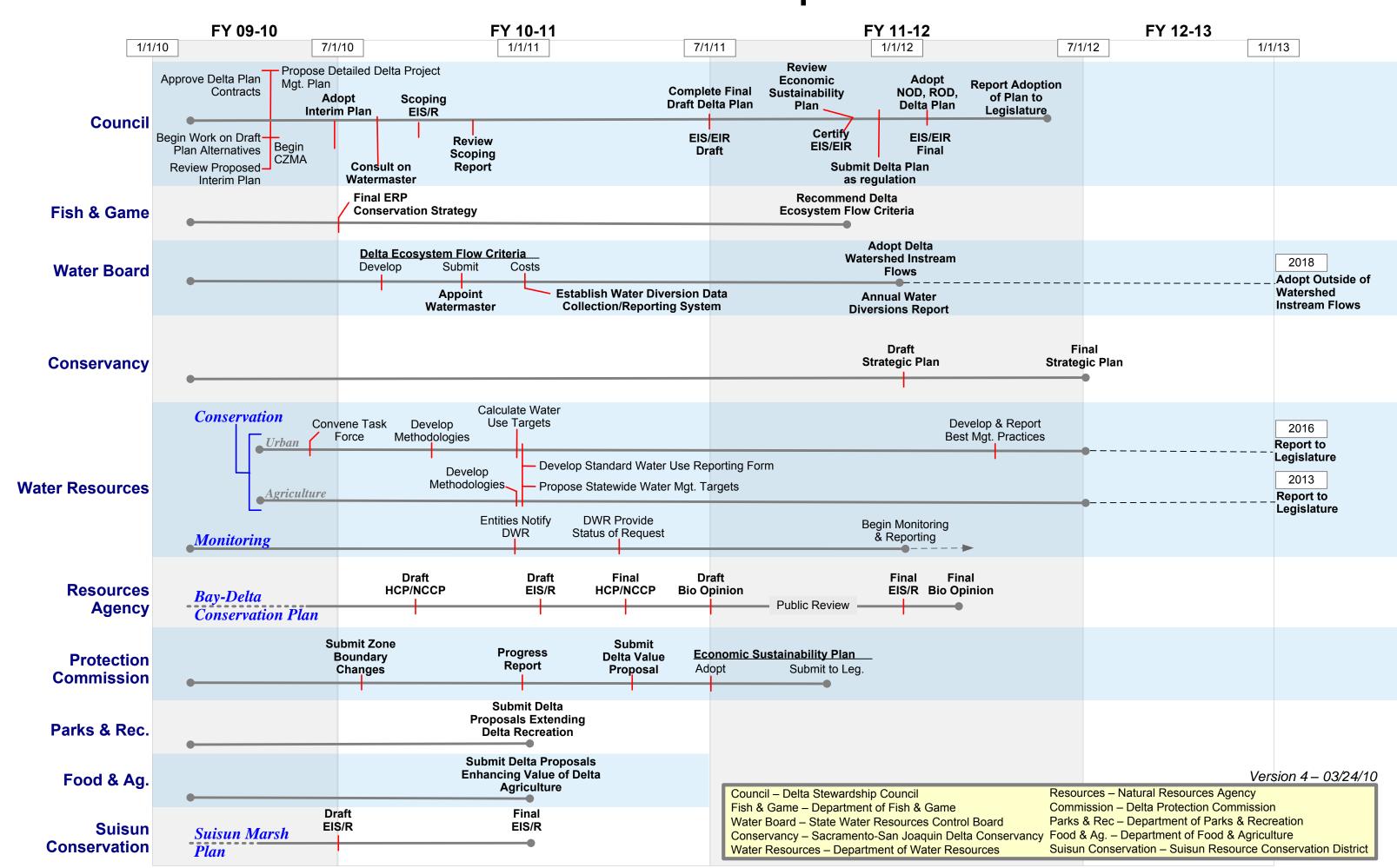
Interim Plan

- ☐ Legislation requires Council to develop interim plan with recommendations:
 - ✓ Early actions
 - ✓ Projects
 - ✓ Programs
- ☐ Proposed early actions consistent with longterm Delta Plan objectives

Requested Action:

Direct staff to develop interim plan

Delta Activities – SBX7 Implementation



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Option to Retain Consultant Assistance for the Delta Plan

Requested Action: Direct the Executive Officer and Council executive staff to take primary responsibility for the RFQ process.

Background

This sets forth the steps that staff have initiated to date to acquire consultant assistance to prepare the Delta Plan. It describes the contracting and selection process, and criteria for choosing a consultant(s).

Council members should be mindful, in this regard, of the following key points. First, the Legislature imposed a statutory deadline of January 1, 2012 for completion of the Delta Plan. This deadline--only 21 months away-- is aggressive, given the comprehensive nature and complexity of the plan components and the need for CEQA/NEPA compliance prior to plan adoption. The deadline has been, and still is, driving the need to move expeditiously in securing expert assistance.

Second, the selection process initiated by staff--utilizing the Department of Water Resources' (DWR) existing architectural and engineering (A&E) process, gives the Council a valuable option to consider continuing to completion. DWR is acting as an administrative liaison in coordination with select Council staff, but the final hiring decision will be made by the Council, and the resulting contract will be assigned to the Council.

However, the current selection process is not the only option. The Council may wish, as an alternative, to terminate the current process and issue its own RFQ. In order to use the A&E selection process, state law requires that agencies first adopt A&E regulations through formal rulemaking, which may take 4-6 months (and sometimes longer). The Council could also use the normal competitive bid process, authorized through the State Contracts Act, which can take over nine (9) months. Given the tight statutory completion deadline for the Delta Plan, staff did not rate either of these options as favorably as the one initiated through DWR's existing process.

The RFQ process currently underway solicits qualified consulting firms experienced in project management, and specific technical and environmental services. The selected consultants, at the direction of the Council and its executive management, will manage the development of the overall Delta Plan, evaluate related technical and policy issues, evaluate and recommend approaches to integrate the Delta Plan with other related and

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developing plans. The consultant(s) will also evaluate and recommend approaches for science based adaptive management, provide graphic and publishing support services, evaluate potential environmental impacts and mitigation measures at a programmatic level, research and recommend approaches to achieve federal consistency, and provide communications and outreach services.

The contractor(s) will perform services, as directed by the Council, through individual task orders. It is anticipated that initial task orders, issued when the contract is executed, will include development of a project management plan and the ability to respond quickly to Council requests. Staff will add any early efforts requested by the Council to the initial task orders.

The RFQ required contractors to submit their qualifications by February 23, 2010. Council's staff have completed an initial review of the submissions and, if directed by the Council, will continue the process by conducting interviews during the week of April 5, 2010. After the interviews, staff will rank the firms and present the Council with a list of finalists along with the recommended firm(s) and rationale for the selection. The Council will be asked to approve the selection at the next meeting, as well as the initial task orders.

Staff anticipates the consultant selection process will be completed in May 2010, with the contract(s) fully executed.

Fiscal Information

Work under this contract will be funded from the Infrastructure Bond Act of 2006, Proposition 84, California Safe Drinking Water, Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

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List of Attachments

Attachment 1 – List of Qualifications Requested in the Delta Plan RFQ

Contact

Angela D'Ambrosio
Administrative Manager, Strategic Planning

List of Qualifications Requested in Delta Plan RFQ

Description: The following is a list of the qualifications requested in the Delta Plan RFQ. Contractor(s) were asked to provide the following services and expertise to support the development of the Delta Plan:

- 1. Project Management
- 2. Technical Services
- Environmental Services

The final product will be a completed draft Delta Plan and CEQA/NEPA compliance document (EIR/EIS) for presentation to the Council, so that it may be adopted by the Council by January 1, 2012, and submitted for approval to the appropriate federal agency for purposes of ensuring federal consistency.

Project Management (PM)

- 1. The Contractor will provide a Project Director, who shall serve as the primary person responsible for the delivery of the project, and a Project Manager, who shall manage the day-to-day operations.
- 2. The Contractor will provide necessary staff, including ancillary services in support of this effort, as required to support the Delta Plan and manage the integration of Council and Contractor staff to effectively implement the Delta Plan process. It is Council's expectation that the Contractor's team be fully integrated with Council's internal staff to effectively manage the implementation of the Delta Plan process.
- 3. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its work products including management reports, schedules, risk analysis, drawings, specifications, and other engineering support services.

PROJECT DIRECTOR DESIRABLE QUALIFICATIONS:

- At least ten (10) years experience managing projects of similar scope and magnitude
- Extremely organized and big picture-oriented
- Documented success with similar projects
- Knowledge of government policies and processes
- Excellent writing skills
- Knowledge of planning and natural resource management
- Reinforces team approach throughout project both on external issues and internal initiatives
- Supports and solicits input from team members at all levels

The ideal candidate is a flexible, outgoing and creative person with excellent organizational skills and an ability to work independently and in a team environment.

PROJECT MANAGER DESIRABLE QUALIFICATIONS:

- Extremely organized and detail-oriented
- Documented success with similar projects
- Knowledge of government policies and processes
- Excellent writing skills
- Knowledge of planning and natural resource management
- Experience with computer networking, Excel, Project

The ideal candidate is a flexible, outgoing and creative person with excellent organizational skills and an ability to work independently and in a team environment.

Technical Services

- Ecosystem health and restoration: Evaluate and recommend strategies for restoration, enhancement, and creation of interconnected habitats within the Delta and Suisun Marsh and their watersheds. Required expertise includes knowledge of:
 - Ecosystem dynamics of both aquatic and terrestrial habitats such as intertidal marshes, seasonal floodplains, open bays, upland areas, seasonal wetlands, riparian and terrestrial corridors, and vernal pools;
 - b. Delta animal species including endangered and declining fish, waterfowl and shorebirds, and land-based species.
- 2. Water resources engineering, infrastructure, and operations: Evaluate and recommend strategies for improved statewide water supply infrastructure and operations that further the coequal goals. Required expertise includes:
 - a. State and federal water project facilities and operations
 - b. Hydrodynamics of Central Valley and Delta/Suisun Marsh
 - c. Local and regional storage and conveyance projects impacting the Delta
 - d. Water resources engineering
 - e. Water transfers
 - f. Reservoir operations
 - g. Seismic considerations for water supply infrastructure
 - h. Conveyance methods (surface and subsurface)
 - i. Storage methods (surface and subsurface)

- Water supply planning: Evaluate and recommend strategies for improving water supply reliability as it relates to furthering the coequal goals. Required expertise includes:
 - a. Statewide water management planning
 - b. Integrated regional water management planning
 - c. Water use efficiency, conservation and sustainability
 - d. Water recycling
 - b. Urban, residential, industrial and agricultural water use
- 4. Water quality: Evaluate and recommend strategies for improving water quality as it relates to furthering the coequal goals. Required expertise includes:
 - a. Drinking and agricultural water quality needs and regulatory requirements
 - b. Ecosystem water quality needs and regulatory requirements
 - c. Delta water quality contaminants of concern, origins, transport, impacts and fates
 - d. Emerging contaminants of concern, origins, transport, impacts and fates
- 5. Water rights: Evaluate and recommend strategies regarding water rights as they relate to furthering the coequal goals. Required expertise includes knowledge of all types of California water rights and the procedures/requirements governing them.
- Land use planning: Evaluate and recommend strategies for regional and local land use planning as it relates to furthering the coequal goals.
 Required expertise includes general planning processes of local and regional governments, especially as related to Delta land use planning.
- 7. Levee engineering and policy: Evaluate and recommend strategies for levee investments as they relate to furthering the coequal goals. Required expertise includes:
 - a. Delta levee standards, designs, conditions and construction
 - b. State of the art levee and seawall design approaches
 - c. Environmental and cost impacts of various levee approaches
 - d. Current State and federal levee investment programs
 - e. Levee evaluation techniques
- 8. Transportation and energy infrastructure: Evaluate and recommend strategies for dealing with transportation and energy infrastructure as they impact achievement of the coequal goals. Required expertise includes:
 - a. Highway/road planning and construction in the Delta
 - b. Energy infrastructure planning and construction in the Delta
- 9. Flood risk reduction: Evaluate and recommend strategies for reducing

flood risk in the Delta and their impact on the coequal goals. Required expertise includes:

- a. Principles of risk management, specifically flood risk
- b. Public health and safety
- c. Appropriate land uses
- d. Flood prevention and protection
- e. Emergency preparedness and response
- 10. Agriculture: Evaluate and recommend strategies for enhancing the profitability and sustainability of agriculture in the Delta, and its connection to achieving the coequal goals. Required expertise includes:
 - a. Delta sustainable farming principles and techniques
 - b. Carbon sequestration farming
 - c. Peat accretion farming
 - d. High value farming
- 11. Economics: Evaluate and recommend economic strategies related to any/all areas of work listed above for achieving the coequal goals and the enhancement of the Delta as an evolving place.
- 12. Finance: Evaluate and recommend strategies for initial and ongoing sustainable financing of the programs and projects needed to achieve the coequal goals and the enhancement of the Delta as an evolving place.
- 13. Climate change: Evaluate and recommend strategies for dealing with climate change as it impacts any/all of the areas of work listed above and associated achievement of the coequal goals. Required expertise includes:
 - a. Knowledge of current anticipated climate change impacts
 - b. Ability to assess and apply emerging climate change information and predictions
- 14. Computer modeling interpretation and assessment as it relates to any of the above specific areas of work.
- 15. Geographic information system capabilities including map preparation and analysis compatible with State systems/standards.
- 16. Regulatory requirements (endangered species, water quality, etc.): There are a multitude of requirements that must be accommodated in the crafting of the Delta Plan. The Contractor must identify all requirements, and describe and evaluate their impacts on overall plans and specific projects. The Contractor must develop a comprehensive approach to comply with the requirements as the Delta Plan is implemented.

17. Related plans: There is an extensive list of related plans that feed into the Delta Plan. Some of the plans already exist and must be incorporated, some are being developed and will/may feed into the process of developing the Delta Plan, and some will be triggered by the adoption of the Delta Plan. In collaboration with the Delta Plan Team, the Contractor must identify the entire list of related plans and integrate them in terms of content and process.

An example list for illustration purposes only:

California Water Plan

Bay Delta Conservation Plan

Environmental Restoration Program Conservation Plan

Water Boards Delta Water Quality Plans:

Strategic Plan

Bay Delta Water Quality Control Plan

Central Valley Water Quality Control Plan

CalTrans Strategic Plan

Delta Risk Management Strategy

Emergency Preparedness and Response Plan

CALFED Surface Storage Investigations

FloodSAFE California

Delta Protection Commission Land Use and Resource Management Plan Delta County General Plans and Habitat Conservation Plans:

Contra Costa

Sacramento

San Joaquin

Solano

Yolo

- 18. Science integration, including monitoring design and data collection: The Delta Plan is required to make use of the best available science, and where appropriate shall utilize monitoring, data collection, and analysis of actions to determine progress toward meeting quantified targets set by the Delta Plan Team. Required expertise includes:
 - a. State of the art knowledge of scientific dynamics and mechanisms affecting ecosystem health
 - b. Knowledge and understanding of recent and historical scientific monitoring and data collection
 - c. Ability to interpret and apply scientific data to developing strategies
- 19. Performance measures: The Delta Plan must include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan, and methods by which progress will be determined. Required expertise includes the ability to work with a broad range of scientific, engineering and policy experts in developing and testing appropriate performance measures and interim progress markers.

- 20. Science-based adaptive management: The Delta Plan must include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions. Further, this will include the integration of scientific and monitoring results into ongoing Delta water management. Required expertise includes the ability to develop and test, with appropriate participation and input, processes implementing this adaptive management approach.
- 21. Federal Consistency: Planning and compliance processes required to achieve federal consistency. The Delta Plan must be developed consistently with the following federal laws:
 - a. Coastal Zone Management Act of 1972 or an equivalent compliance mechanism.
 - b. Section 8 of the Reclamation Act of 1902.
 - c. Clean Water Act.
 - d. Federal Endangered Species Act

Consequently, the appropriate approach to ultimately obtaining federal approval of the Delta Plan for purposes of ensuring federal consistency must be identified early in the process, and complied with throughout.

- 22. Communications and Outreach: To be successful, development of the Delta Plan will require extensive public outreach and stakeholder involvement. Example outreach and facilitation tasks could include:
 - a. Work with Delta Plan Team to establish a Delta Plan communications strategy and help implement the strategy to share Plan-related information among the Council's partner agencies and contractors.
 - b. Coordinate public outreach and communication plan efforts with Delta Plan Team management.
 - c. As part of the communications strategy, work with Delta Plan Team staff to ensure integration and coordination among several ongoing State and federal planning processes in the Delta.
 - d. As part of Plan development strategy, establish a stakeholder involvement process to guide and inform the Council.
 - e. Work with Delta Plan Team to identify goals and desired outcomes for a stakeholder involvement process.
 - f. Work with Delta Plan Team and contractors to identify and select members of various stakeholder groups.

- g. Establish process and protocols for sub-committees, working groups, and other established subsets of various stakeholder groups as needed.
- h. Plan, coordinate and arrange for meeting logistics and facilitate regularly scheduled meetings of stakeholder groups and subgroups as needed.
- i. Develop work plan, schedule and cost estimates for Delta Stewardship Council communications and outreach program components.
- j. Work with Delta Plan Team and contractors to produce meeting agendas, supporting materials, summaries, etc.
- Provide technical support to stakeholder groups to increase comprehension of technical data, policies, requirements, and legislation.
- Assist with implementation of Delta Plan outreach including but not limited to media outreach, public information presentations, and stakeholder input workshops.
- m. Develop and compile outreach communication materials including, but not limited to, printed materials and presentations explaining the Delta Plan, its components, and its relationship to other State and federal planning efforts and projects in the Delta and throughout California.
- 23. Provide Support for General Public Involvement: To be successful, the Delta Plan must coordinate with, provide guidance to, and receive guidance from other State, federal, regional and local planning efforts and projects in the Delta. Example outreach and facilitation tasks could include:
 - 1. Work with Delta Plan Team, other State and federal agencies, and contractors to develop and implement a comprehensive Delta public involvement plan.
 - 2. Facilitate meetings within the Delta Plan implementation team and among State and federal agencies as needed.
 - 3. Assist with development of key messages.
 - 4. Communicate pertinent information to the public in a variety of formats, including the Internet.

- 5. Keep public information up-to-date and make available in a timely fashion.
- 6. Host community workshops to explain planning process, integration with other Delta planning processes and progress toward milestone achievements.

Environmental Services

Environmental analysis, review and documentation: The Delta Plan will serve as the overarching Delta planning document to identify comprehensive solutions addressing the coequal goals and the enhancement of the Delta as an evolving place. As such, program-level environmental review and evaluation will be needed and mitigation identified. The Contractor will complete this environmental review pursuant to the following:

- a. California Environmental Quality Act
- b. National Environmental Protection Act (necessary to obtain federal approval under CZMA or equivalent)
- c. State and federal Endangered Species Act and legal decisions related to Delta pumping
- d. All other relevant environmental regulations or permits required for the support of the Delta Plan

The Contractor will use the completed environmental review as the basis for preparation and completion of a programmatic EIR/EIS for the Delta Plan.

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Development of the Delta Plan Consistent with the Coastal Zone Management Act

Summary: The work plan for the Delta Plan will include steps to ensure the Delta Plan is developed consistent with the federal Coastal Zone Management Act (CZMA) or an equivalent compliance mechanism. This report: 1) discusses why the Delta Plan is to be consistent with CZMA or an equivalent mechanism; 2) provides an overview of CZMA, and the contents of a coastal management program (CMP) and the federal consistency provision of CZMA; 3) identifies two issues that will be addressed early in the work plan: (a) whether the Delta can be included within CZMA's definition of the "coastal zone"; and (b) "an equivalent compliance mechanism"; and 4) asks the Council if it would be interested in more detailed presentations on the topics of CZMA, equivalent compliance, CMPs and federal consistency.

Background

The Council's implementing legislation (Section 85082) directs the Council to establish a strategy to engage participation of federal agencies with responsibilities in the Delta. Further, that strategy is to engage the federal agencies in the development of the Delta Plan consistent with the federal Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. Sec 1451 et seq.) or an equivalent compliance mechanism. The *Final Delta Vision Strategic Plan* (October 2008) also mentions consistency with the CZMA (see Goal 7 page 121). In seeking a way to ensure federal and state consistency with the "California Delta Ecosystem and Water Plan" (CDEW), the Strategic Plan directs that the CDEW be prepared according to guidelines of the CZMA.

The CZMA¹ established a voluntary program to encourage states to develop and implement programs to manage the nation's coastal resources. The National Oceanic and Atmospheric Administration (NOAA), located within the U.S. Department of Commerce, administers the CZMA at the federal level and works with state coastal zone management partners to balance coastal development with resource conservation. The CZMA establishes minimum standards for state coastal management programs (CMPs) and provides federal grant assistance and federal consistency authority to states with approved programs. Thirty-four coastal and Great Lakes states, territories and commonwealths have approved CMPs.

¹ Much of the following was adapted from letters (Attachments 1 and 2) written by the San Francisco Bay Conservation and Development Commission and the California Department of Justice (DOJ) regarding a potential state coastal management program for the Delta.

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In developing a CMP, the state must satisfy the requirements of CZMA and its implementing regulations. Some of the more critical requirements for a CMP are that it:

- 1. Identify and evaluate coastal resources that require state management or protection;
- 2. Re-examine existing policies or develop new policies to manage these resources;
- 3. Determine specific uses and special geographic areas that are to be subject to the management program;
- 4. Identify the inward and seaward areas subject to the management program;
- 5. Provide for consideration of the national interest in planning for and siting of facilities;
- 6. Include sufficient legal authorities and organizational structure to implement the program and to ensure conformance with the program;
- 7. Ensure an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and federal agencies.
- 8. Provide a mechanism to ensure that all state agencies adhere to the program; and 9. Contain enforceable policies and mechanisms to implement the state's Coastal Nonpoint Pollution Control Program.

When complete, the CMP is submitted to NOAA for approval. An environmental assessment prepared pursuant to the National Environmental Policy Act must accompany the CMP. The timeframe for preparing a CMP seems to vary. It appears that the two segments of California's current CMP (described later) took several years to complete and obtain NOAA's approval. Accordingly, having an approved CMP by the time the Delta Plan is to be complete and underway (January 1, 2012) could be challenging.

A unique aspect of coastal zone management is "federal consistency" which ensures that federal actions that are reasonably likely to affect any land or water use or natural resource of the coastal zone will be consistent with the enforceable policies of the CMP. If California were to develop a federally-approved Delta CMP, federal activities such as dredging and levee maintenance, highway construction and power plant operations would be required to be consistent with that program. This aspect of the CZMA may be what the implementing legislation and the Delta Vision Strategic Plan had in mind as a way to ensure federal and state consistency with the Delta Plan and the "California Delta Ecosystem and Water Plan".

California's current CMP was approved in two segments, San Francisco Bay and the Pacific coast (Figure 1).² Through the McAteer-Petris Act of 1965, the San Francisco Bay Area Conservation and Development Commission (BCDC) was granted authority to plan and regulate activities and development in and around the Bay. The Suisun Marsh Preservation Act of 1974 gave BCDC expanded permit jurisdiction over the 85,000-acre

² Much of this description about California's CMP segments was taken from an undated report on the Coastal Commissions' website entitled "Final Evaluation Findings for the California Management Program December 1996 through May 2001". It was prepared by the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, United States Department of Commerce.

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Suisun Marsh. The management program for this segment was approved by NOAA on February 16, 1977. In general, the eastward boundary of this segment is a line across the Sacramento River running from a point just downstream of the City of Pittsburg across to Collinsville.

The California Coastal Act (CCA) of 1976 granted state authority to the California Coastal Commission (CCC) to manage the conservation and orderly development of coastal resources for the remainder of California's coast. The management program for the coast segment was approved by NOAA on November 7, 1977. The Coastal Zone extends from Oregon to Mexico and also includes the shoreline around nine offshore islands.

A third component of the CMP is the State Coastal Conservancy (SCC). The SCC works to preserve, improve, and restore public access and natural resources along the Pacific coast and San Francisco Bay. The SCC is able to complement the regulatory activities of its sister agencies through its authority to acquire land, design and implement resource restoration and enhancement programs and resolve coastal land use conflicts.

Approach

In view of the requirements outlined in the legislation, it is staff's intent to include steps in the Delta Plan Project Management Plan (PMP or work plan), subject to any suggestions or direction provided by the Council, that will ensure the Delta Plan is prepared in a manner consistent with CZMA or an equivalent compliance mechanism. (The Delta Plan PMP will be presented to the Council for their review and comments as soon as possible after the consultant assistance contracts are executed.)

The California Department of Justice (DOJ) letter discusses whether the Delta can be included within the CZMA's definition of the "coastal zone" and thus whether California's existing CMP could be amended to include the Delta. DOJ concluded that the answer "will require a factual analysis . . . but is likely yes, at least as to some portion of the delta". The Delta Plan PMP will include steps to undertake this analysis.

The possibility of establishing a compliance mechanism equivalent to CZMA is another issue that will need to be addressed early in the PMP. Such an effort would probably require new federal legislation.

As noted above, California currently has a coastal management program; and representatives from BCDC, the Coastal Commission and Coastal Conservancy have a good working knowledge of all aspects of the CZMA including the federal consistency requirements. Similarly, staff members within the Department of Justice have studied the question of a coastal management program for the Delta. If the Council is interested in additional insight into CZMA, an equivalent compliance mechanism, developing a coastal management program and federal consistency, staff would invite members from these agencies as well as others to brief and respond to the Council.

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Fiscal Information

Not applicable

List of Attachments

Attachment 1 – San Francisco Bay Conservation and Development Commission memorandum to Greg Bourne, Facilitator, Delta Vision Governance Work Group dated May 1, 2008.

Attachment 2 – California Department of Justice letter to John Kirlin dated September 8, 2008.

Attachment 3 – CZMA Federal Consistency Overview, February 20, 2009. Office of Ocean and Coastal Resource Management. NOAA.

Attachment 4 – Figure 1: Map

Contact

Rick Breitenbach Phone: (916) 445-0143

Program Manager, Strategic Planning

San Francisco Bay Conservation and Development Commission

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May 1, 2008

TO: Greg Bourne, Facilitator, Delta Vision Governance Work Group

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)

Jessica Hamburger, Bay-Delta Analyst (415/352-3660 jessicah@bcdc.ca.gov)

SUBJECT: Developing a Federally-Approved Coastal Management Program for the Delta

Summary

To establish a state program with which federal agencies would have to comply, California would have to create a state coastal management program for the Delta segment of the California coastal zone under the provisions of the federal Coastal Zone Management Act (CZMA). To achieve this, a state agency or agencies would have to develop a management program for the Delta segment and submit it to the National Oceanic and Atmospheric Administration (NOAA) for approval. The Delta Coastal Management Program (CMP) would have enforceable authority under state law over land use and water use in the Delta. A Delta CMP could be developed by (1) an enhanced Delta Protection Commission; (2) a new agency dedicated to the dual goals of ecosystem sustainability and water supply reliability; or (3) a network of new and/or existing agencies. The most critical requirement for gaining federal consistency authority is for the state policies over land and water use to be independently enforceable over state, local and private activities in the Delta under state law.

Analysis

Background. The CZMA established a voluntary program to encourage states to develop and implement programs to manage the nation's coastal resources. NOAA, located within the U.S. Department of Commerce, administers the CZMA.¹ The CZMA establishes minimum standards for state coastal management programs (CMPs) and provides federal grant assistance and federal consistency authority to states with approved programs. In the mid-1970s, two independent programs that make up the California CMP were approved as meeting the standards of the CZMA. One segment, administered by the California Coastal Commission, covers the Pacific Ocean coastline. A second segment, administered by the San Francisco Bay Conservation and Development Commission, covers San Francisco Bay and the Suisun Marsh. A third element of the CMP administered by the California State Coastal Conservancy applies to both segments of the California coastal zone.

¹ This background section is adapted from *Program Change Guidance: The Coastal Zone Management Act and Changes to State and Territory Coastal Management Programs,* Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, July 1996; and *Texas Coastal Management Program Final EIS*, August 1996.



The Coastal Programs Division, within NOAA's Office of Ocean and Coastal Resource Management (OCRM), administers the Coastal Zone Management Program at the federal level and works with state coastal zone management partners to balance coastal development with resource conservation.

Thirty-four coastal and Great Lakes states, territories and commonwealths have approved coastal management programs. Together, these programs protect more than 99 percent of the nation's 95,331 miles of ocean and Great Lakes coastline.

To comprehensively manage our coastal resources and balance often competing land and water uses while protecting sensitive resources, state CMPs are expected to:

- Protect natural resources;
- · Manage development in high hazard areas;
- Manage development to achieve quality coastal waters;
- Give development priority to coastal-dependent uses;
- Have orderly processes for the siting of major facilities;
- Locate new commercial and industrial development in, or adjacent to, existing developed areas;
- Provide public access for recreation;
- Redevelop urban waterfronts and ports;
- Preserve and restore historic, cultural, and aesthetic coastal features;
- Simplify and expedite governmental decision-making actions;
- Coordinate state and federal actions;
- Give adequate consideration to the views of federal agencies;
- Assure that the public and local governments have a say in coastal decision-making; and
- Comprehensively plan for and manage living marine and estuarine resources.

A unique aspect of coastal zone management is "federal consistency" which ensures that federal actions that are reasonably likely to affect any land or water use or natural resource of the coastal zone will be consistent with the enforceable policies of a coastal state's or territory's federally approved CMP. If California were to develop a federally-approved Delta CMP, federal water diversions, dredging and levee maintenance, highway construction and power plant operations would be required to be consistent with that program.

After a state develops a CMP, OCRM reviews it to determine if it satisfies the requirements of Sections 305, 306 and 307 of the CZMA and implementing regulations (44 CFR Part 18595), codified as 15 C.F.R. Part 923. OCRM will also evaluate whether any policies are preempted by federal law. The proposed CMP must be applied to all relevant public and private activities, and not discriminate against a federal agency or activity. In summary, the requirements for program approval are that a state develops a management plan that, among other things, does the following:

- 1. Identifies and evaluates those coastal resources recognized in the CZMA that require management or protection by the state or territorial government;
- 2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

- 3. Determine specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas subject to management should be based on resource capability and suitability analyses and socio-economic consideration;
- 4. Identifies the inward and seaward areas subject to the management program;
- 5. Provides for consideration of the national interest in planning for and siting of facilities; and
- 6. Includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the program, states are obligated to follow an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and federal agencies. (See Appendix A for an excerpt of the CZMA containing the requirements for CMPs.)

Developing and Implementing a Delta Coastal Management Program. A key question to consider is which state agency or agencies should be responsible for developing and implementing a Delta CMP. It may be useful to consider implementation before considering development of a Delta CMP.

As described in Appendix A, the agency or agencies involved in implementing a Delta CMP would have authority to administer land use and water use regulations to control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses. If it is necessary to acquire property to achieve the objectives of the management program, the state must have the authority to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program. As noted above, the California CMP divides these roles among the Coastal Commission, the Bay Conservation and Development Commission and the Coastal Conservancy.

One option for implementation of the Delta CMP would be to rely on a Delta Protection Commission with enhanced regulatory powers, augmented by a Delta Program of the Coastal Conservancy (or an independent Delta Conservancy). In this scenario, a new agency dedicated to implementing the dual goals of ecosystem sustainability and water supply reliability could be assigned authority to resolve conflicts upon appeal of decisions made by the other two agencies.

Another option would be to endow the new "dual goals" agency with primary authority to implement the CMP and enable that agency to delegate authority to and supervise the land and water use regulatory agency and the conservancy.

Both of these options would require state legislation to create an agency or agencies with the necessary authority to implement the CMP. A third option, which would not require state legislation, would be to rely on existing state and local agencies with authority over land use, water use and land acquisition in the Delta. However, it may be advantageous to consolidate powers in existing or new agencies that are focused on the Delta. No federal legislation would be required.

The Delta CMP could be developed by (1) an enhanced Delta Protection Commission, possibly with support from a conservancy agency; (2) a new "dual goals" agency dedicated to ecosystem sustainability and water supply reliability; or (3) a network of existing and/or new departments. To jumpstart the process, the Delta Vision Blue Ribbon Task Force could develop a draft Delta CMP that could be further developed and finalized through appropriate governmental and public participation processes.

Appendix A. CZMA Requirements for Coastal Management Programs

Coastal Zone Management Act, Section 306(d)

- (d) Mandatory adoption of State management program for coastal zone

 Before approving a management program submitted by a coastal state, the Secretary shall find the following:
 - (1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title.
 - (2) The management program includes each of the following required program elements:
 - (A) An identification of the boundaries of the coastal zone subject to the management program.
 - (B) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.
 - (C) An inventory and designation of areas of particular concern within the coastal zone.
 - (D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.
 - (E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.
 - (F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.
 - (G) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.
 - (H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.
 - (I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.
 - (3) The State has--
 - (A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone--
 - (i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and
 - (ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and
 - (B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments

and agencies in carrying out the purposes of this chapter; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that--

- (i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;
- (ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and
- (iii) the management agency, if any comments are submitted to it within the 30-day period by any local government--
 - (I) shall consider the comments;
 - (II) may, in its discretion, hold a public hearing on the comments; and
 - (III) may not take any action within the 30-day period to implement the management program decision.
- (4) The State has held public hearings in the development of the management program.
- (5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.
- (6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.
- (7) The State is organized to implement the management program.
- (8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.
- (9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.
- (10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power--
 - (A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
 - (B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.
- (11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:
 - (A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.
 - (B) Direct State land and water use planning and regulation.

- (C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.
- (12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.
- (13) The management program provides for--
 - (A) the inventory and designation of areas that contain one or more coastal resources of national significance; and
 - (B) specific and enforceable standards to protect such resources.
- (14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.
- (15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.
- (16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 1455b of this title.

State of California DEPARTMENT OF JUSTICE



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September 8, 2008

Mr. John Kirlin Executive Director Delta Vision Task Force 1416 Ninth Street, Suite 1311 Sacramento, CA 95814

RE: Questions Regarding a Potential State Coastal Management Program for the Delta

Dear Mr. Kirlin:

This letter responds to your legal questions concerning the potential for federal approval of a new or amended state coastal management program (hereafter "CMP" or "management program") for the delta region pursuant to the federal Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 et seq. This letter is based on the results of our legal research, as well as discussions with California Coastal Commission, San Francisco Bay Conservation and Development Commission (BCDC) and federal Office of Coastal and Resource Management (OCRM) staff. Given the legal focus of this letter, it does not analyze the wisdom, practicality or political feasibility of creating a new or amended CMP for the delta.

SUMMARY OF QUESTIONS PRESENTED AND CONCLUSIONS REACHED

The first section summarizes the basic substantive and procedural requirements for the state to obtain approval of a CMP. While these requirements are extensive, they are not insurmountable.

The second section discusses whether a separate CMP can be created for the delta, or alternatively whether the state's existing CMP would have to be amended to incorporate the delta. This section concludes that a delta CMP could be established as a new, independent component of the existing California CMP. In the alternative, one or both of the two major existing California CMP segments administered by the Coastal Commission and BCDC could be expanded to include the delta. Either approach would require an amendment to the existing CMP.

The third section addresses whether the existing two lists of federal licenses and permits subject to consistency certification requirements can be amended to include endangered species take permits and other types of federal agency approvals or whether a third list can be established in conjunction with the development of a new delta segment of the state's existing

CMP. This section concludes that either option is available.

The fourth section discusses whether the delta could be included within the CZMA's definition of the "coastal zone" and thus whether California's existing CMP could be amended to include the delta. It concludes that the answer will require a factual analysis that is beyond the scope of this memorandum, but is likely yes, at least as to some portion of the delta.

Finally, the fifth section briefly discusses whether a new delta CMP segment could incorporate the anticipated Bay-Delta Conservation Plan (BDCP) and concludes that this would be legally permissible, provided the BDCP, in combination with the other portions of a delta CMP segment, meets all requirements of the CZMA and its implementing regulations for approval of a CMP.

1) WHAT ARE THE REQUIREMENTS FOR APPROVAL OF A NEW CALIFORNIA COASTAL MANAGEMENT PLAN?

The requirements and process for approval of a state CMP are set forth in the CZMA and its implementing regulations at 15 C.F.R. Part 923.

A. Substantive Requirements for CMP Approval

The basic substantive requirements for federal approval of a state CMP program are as follows. Note that the following is not a comprehensive discussion of all substantive requirements for CMP approval, but rather is simply an overview of some of the more critical requirements.

The state must develop a management program that is adequate to carry out the purposes of, and consistent with the goals and policies of, the CZMA. (See 16 U.S.C. §§ 1452, 1455(d)(1); 15 C.F.R. § 932.3(a).) In general, the program must do all of the following:

- 1) Identify and evaluate coastal resources that require state management or protection;
- 2) Reexamine existing policies or develop new policies to manage these resources which are specific, comprehensive and enforceable;
- 3) Determine specific use and special geographic areas that are to be subject to the management program;
- 4) Identify inland and seaward boundaries of the area subject to the management program;
- 5) Provide for the consideration of the national interest in the planning for and siting of certain facilities;
- 6) Include sufficient legal authorities and organizational arrangements to implement and ensure conformance with the program;
- 7) Provide for public participation in permitting processes, consistency determinations, and other similar decisions;

- 8) Provide a mechanism to ensure that all state agencies adhere to the program; and
- 9) Contain enforceable policies and mechanisms to implement the state's Coastal Nonpoint Pollution Control Program, as required by section 1455b of the CZMA (see description of the California CNPCP, attached).

(15 C.F.R. § 923.1(c); 16 U.S.C. §§ 1455(d)(2), (d)(9)-(11), (d)(14)-(16).)

The CZMA and its implementing regulations define a "management program" as a "comprehensive statement in words, maps, illustrations or other media of communication, including an articulation of *enforceable policies* and citation of authorities providing this enforceability, prepared and adopted by the state . . . setting forth objectives, policies and standards to guide public and private uses of lands and waters in the coastal zone." (15 C.F.R. § 923.2(g), emphasis added; see also 16 U.S.C. § 1453(12).)¹ The CZMA lists the basic elements and substantive components of a state management program (see 16 U.S.C. § 1455(d)), while the CZMA implementing regulations contain more detailed requirements concerning the content of state management programs. The basic requirements for and substantive components of a state CMP are summarized below.

1. Land and water uses to be managed

First, the management program must define permissible land and water uses in the coastal zone and "provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise." (16 U.S.C. § 1455(d)(2)(B); see also 15 C.F.R. §§ 923.3(b), 923.11(a).) The CMP must explain specifically how these uses will be managed under the program. (15 C.F.R. § 923.11(a)(3).) The CZMA regulations contain detailed requirements regarding identification and management of land and water uses in a state CMP. (See *id.*, Part 923, Subpart B, § 923.10 et seq.)

¹ The definitions of "land use" and "water use" are found at 16 U.S.C. § 1453(10) and (18). "Enforceable policies" is defined as "State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone." (*Id.*, § 1453(6a).)

2. Protection of significant resources and areas

Second, the management program must "include provisions to assure appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area." (15 C.F.R. § 923.3(b).) Again, the regulations contain detailed requirements for designating these "areas of particular concern" subject to special management "because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system." (*Id.*, § 923.20(a); see *id.*, Part 923, Subpart C; see also 16 U.S.C. § 1455(d)(2)(C) and (d)(9), (d)(13).) Special management methods may include "regulatory or permit requirements applicable only to the area of particular concern," or increased inter-governmental coordination, technical assistance and/or financial expenditures, among other management techniques. (15 C.F.R. § 923.20(a).)

The management program also must incorporate procedures whereby specific areas may be designated for preservation or restoration to preserve their conservation, recreational, ecological, historical or esthetic values. (16 U.S.C. § 1455(d)(9); 15 C.F.R. § 932.22.) The management program further must include "an inventory and designation of areas that contain one or more coastal resources of national significance," as well as "specific and enforceable standards to protect such resources." (16 U.S.C. § 1455(d)(13).)

3. Enforceable policies, authorities and organizational structure

Third, the management program must contain "a broad class" of enforceable policies in each of the following areas:

- 1) Resource protection;
- 2) Management of coastal development; and
- 3) Simplification of government processes.

(15 C.F.R. § 923.3(c).) These broad classes in turn must include "specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas," including policies that address uses of, impacts to, and preservation and enhancement of wetlands, and policies that reduce risk of flood loss, minimize the impacts of flooding, and preserve the natural and beneficial values of floodplains. (*Ibid.*) In addition, the management program must include "broad guidelines on priorities of uses in particular areas." (16 U.S.C. § 1455(d)(2)(E); 15 C.F.R. § 923.21(a) and (g).) The program policies "must be appropriate to the nature and degree of management needed for uses, areas and resources" subject to the program. (15 C.F.R. § 923.3(d).)

The "crucial underpinnings for enforcing the policies" of the management program are the "authorities and organizational structure" on which the state will rely to administer the

program. (15 C.F.R. § 923.40(a).) The authorities and organizational structure guide the management of land and water uses and areas identified in the program. (*Ibid.*) The authorities must ensure implementation of the CMP's enforceable policies (both in terms of geographic scope and subject matter), and be "sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses." (*Ibid.*) The organizational structure likewise ensures implementation of the management program, and must include a description of "the responsibilities and interrelationships of local, areawide, State, regional and interstate agencies in the management process." (16 U.S.C. § 1455(d)(2)(F); see also 15 C.F.R. § 923.46.)

The state must identify relevant state constitutional provisions, statutes, regulations, case law and other legal instruments which demonstrate that the state has the ability to implement the management program's enforceable policies. (15 C.F.R. § 923.41(b); 16 U.S.C. § 1455(d)(2)(D).) The state program also "must incorporate, by reference or otherwise, all requirements established by" federal, state or local government agencies pursuant to the federal Clean Air Act and Clean Water Act. (15 C.F.R. § 923.45; 16 U.S.C. § 1456(f).)

4. State management agency or agencies designated to implement policies

The management program must designate an agency or agencies responsible for implementing and enforcing the program. It is up to the state to determine which entity or entities will implement the various program requirements. (15 C.F.R. § 923.40(b).) The state can choose a single agency or more than one agency to do this (including state agencies, local governments and regional entities), provided each agency has authority for management of the coastal zone. (15 C.F.R. §§ 923.40(b), 923.41(a)(2); 16 U.S.C. § 1455(d)(10).) The "primary [CMP] approval criterion" is a determination that the designated management agency or agencies are required to exercise their authorities in conformance with the management program. (15 C.F.R. § 923.40(b).)

Regardless of which agencies are selected, the "essential requirement is that the State demonstrate that there is a means of ensuring" compliance with the CMP's enforceable policies. (15 C.F.R. § 923.40(b); 16 U.S.C. § 1455(d)(2)(D).) In other words, the program must "identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone." (15 C.F.R. § 923.41(a)(1).) In order to do so, the CMP must utilize one or more of the following three methods of oversight and enforcement: (1) state establishment of criteria and standards for local implementation, subject to administrative review and enforcement; (2) direct state land and water use planning and regulation; or (3) state review for consistency with the CMP of all development plans, projects, or land and water use regulations proposed by any state or local authority or private party. (15 C.F.R. § 923.40(b); 16 U.S.C. § 1455(d)(11).) The last method must include state power to approve or disapprove the activity after a public notice and hearing. (16 U.S.C. § 1455(d)(11).) The CZMA regulations contain detailed requirements addressing each of these methods. (See 15 C.F.R. §§ 923.42,

923.43, 923.44.)

The agency or agencies chosen to oversee implementation of the management program must have authority to manage the defined coastal zone and implement the management program, including authority to: (1) administer land and water use regulations "to control development to ensure compliance with the management program and to resolve conflicts among competing uses;" and (2) "acquire fee simple and less than fee simple interests in land, waters and other property through condemnation or other means when necessary to ensure conformance with the management program." (15 C.F.R. § 923.41(a)(2); 16 U.S.C. §§ 1455(d)(7), (d)(10).)

5. Other requirements

The management program must "provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance." (15 C.F.R. § 932.52; 16 U.S.C. §§ 1455(d)(2)(H), (d)(8).) Further, the management program must contain "a method of assuring" that local land and water use regulations in the coastal zone "do not unreasonably restrict or exclude" uses "of regional benefit." (16 U.S.C. § 1455(d)(12); 15 C.F.R. § 923.12.)

Finally, the CZMA and its implementing regulations contain a detailed discussion of the mandatory procedural components of a management program, including: (1) requirements for public participation in permitting processes, consistency determinations and similar decisions; (2) state procedures for obtaining consistency determinations and certifications (including designation of a state agency to handle consistency review); (3) mechanisms for ensuring continuing inter-agency consultation and coordination throughout program implementation; and (4) mechanisms to ensure that all state agencies will adhere to the program. (16 U.S.C. § 1455(d)(3)(B), (d)(14), (d)(15); 15 C.F.R. §§ 923.50(b), 923.53, 923.57.) For example, there are specific requirements for state coordination of the CMP with local governments. Before implementing any management program decision that would conflict with any local zoning ordinance, decision, or other action, the state coastal management agency must send a notice of the management program decision to any affected local government and provide that agency with a 30-day period in which to comment on the proposed decision. (16 U.S.C. § 1455(d)(3)(B); 15 C.F.R. § 923.57.)

B. Process for CMP Approval

The CZMA and its implementing regulations contain a number of procedural requirements for CMP approval, as discussed below.

1. State process

The state must hold a minimum of two public hearings in developing the management program with at least thirty days' public notice of the hearings. (See 16 U.S.C. § 1455(d)(4); 15 C.F.R. § 923.58.) The state must coordinate closely with various interest groups in developing its management program. (16 U.S.C. § 1455(d)(3)(B); 15 C.F.R. § 923.50(b).) There must be notice and "full participation" by relevant federal, state and local government agencies, regional organizations, port authorities, and other interested public and private parties and persons. (16 U.S.C. § 1455(d)(1); 15 C.F.R. §§ 923.3(a), 923.30(b), 923.51, 923.55.) To ensure such full participation, the state must "[h]old public meetings, workshops, etc. during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials." (15 C.F.R. § 923.55(d).) The state also must consult with each relevant federal agency listed in section 932.3(d), among other specific requirements. (*Id.*, § 923.51(d).) In addition, the state must coordinate its program with specified local, areawide and interstate plans applicable to areas within the coastal zone. (16 U.S.C. § 1455(d)(3)(A); 15 C.F.R. § 923.56.) Finally, the management program must be reviewed and approved by the state Governor. (16 U.S.C. § 1455(d)(5).)

2. Federal process

The state then submits the approved management program, along with a draft environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA), to the Office of Coastal Resources Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA) for a "threshold review." (15 C.F.R. § 923.60(a).) The state's submission must include a letter from the Governor stating, among other things, that the Governor has reviewed and approved the management program as state policy and that the state has the authorities and organizational structure necessary to implement the program. (15 C.F.R. § 923.48.)

OCRM will determine if the management program meets the requirements of the CZMA and its implementing regulations. (15 C.F.R. § 923.60(b).) If the OCRM makes "positive findings" in this regard and does not require "major revisions" to the program, it will prepare a draft and final environmental impact statement pursuant to NEPA. (*Ibid.*) Once NEPA review is completed, the Assistant Administrator of NOAA will determine whether to approve or disapprove the state program. (*Ibid.*) Approval requires, among other things, that "the views of federal agencies principally affected by the state program have been adequately considered." (16 U.S.C. § 1456(b).) The CMP approval process is expected to take at least seven months. (15

C.F.R. § 923.60(b).)

2) CAN CALIFORNIA DEVELOP A NEW CMP, OR MUST THE EXISTING APPROVED CMP BE AMENDED? IF THE LATTER, WHAT IS THE PROCESS FOR AMENDING THE EXISTING CALIFORNIA CMP?

Although technically each state must have only one CMP, there does not appear to be any restriction on a state creating independently-functioning components (referred to as segments) of that management program and submitting these segments to OCRM separately for approval. In fact, California already has two major independent segments to its approved CMP: one for the California Coastal Commission and one for BCDC.² According to Coastal Commission staff, these segments were submitted to OCRM for review and approval at separate times. Thus, it would appear that California could develop and submit to OCRM a third state CMP segment for the delta region. However, even though a management program for the delta may be developed and submitted for approval as a separate *segment* of the state CMP, this still would require the existing CMP to be amended.

Developing a new delta CMP segment of the existing California CMP will need to be accomplished in several steps. First, given the requirements for CMP approval and the need to ensure enforceability of and authorities for the program, as discussed above, development of a delta CMP program likely will require enactment of state legislation expanding the definition of coastal zone (see answer to question 4 below) and establishing a new program for the delta with enforceable policies providing for resource protection and management. This program could consist of new regulatory requirements and/or could enhance and expand the requirements of existing state agencies and programs. It also would have to specify whether a new agency or combination of existing state and local government agencies would administer and enforce the program.

Second, in order to coordinate a new delta CMP segment with the existing approved CMP segments administered by the Coastal Commission and BCDC, it likely will be necessary to make technical amendments to the existing Coastal Commission and BCDC programs. For example, the coastal zone boundaries and Coastal Commission/BCDC authority and jurisdiction will need to be clarified and coordinated with the new delta program. This likely will require legislative amendments to the California Coastal Act, Public Resource Code § 30000 et seq., and the McAteer Petris Act., Government Code § 66600 et seq., which are integral components of the state's existing CMP. In addition, the Coastal Act currently designates the Coastal Commission as "the state coastal zone planning and management agency for any and all purposes," with authority to "exercise any and all powers set forth" in the CZMA. (Pub.

² A third important segment of the state's existing CMP, which relates to both of the other two segments, is the program administered by the California Coastal Conservancy.

Resources Code, § 30330.) The Coastal Commission also is designated as the state agency responsible for issuing federal consistency determinations and certifications, except for those federal activities, licenses and permits that are located within the area of BCDC jurisdiction. (*Ibid.*) These provisions probably also will need to be amended and clarified to account for a new delta program. Or, as an alternative to amending the state CMP to establish a new and independent delta segment of that plan, it is possible that the existing programs established by the Coastal Act or McAteer Petris Act could be modified and expanded to include the delta.

As mentioned, regardless of how a new delta CMP segment is structured in relation to the existing approved segments of the California CMP, adoption of a new delta program will require OCRM approval of an amendment to the state's existing CMP. The procedures for amending an existing, approved state CMP are set forth at 16 U.S.C. § 1455(e) and 15 C.F.R. Part 923, Subpart H, § 923.80 et seq. In brief, amendment requests must be submitted to the Assistant Administrator for NOAA by the state Governor or by the head of the state agency designated to administer CZMA grant funds (the Coastal Commission in California -- see below). (15 C.F.R. § 923.81(a).) The state must hold at least one public hearing on the proposed amendment. (*Ibid.*) Amendment requests must contain the components specified in 15 C.F.R. § 923.81(b). The process for OCRM review and approval of amendments is set forth in 15 C.F.R. § 923.82 and 16 U.S.C. § 1455(e). According to OCRM staff, depending upon the scope of the proposed amendment to an existing CMP, the amendment process may include aspects of the approval process applicable to new CMPs discussed in section 1.B above.

Another important issue to consider is how CZMA grant funds will be made available to and distributed among three state CMP segments. In addition to the procedures for consistency review, one of the big advantages to the state of having an approved CMP is the availability of grant funding for administering the state CMP; for preservation and restoration of designated special management areas; for public access to coastal areas; and for other purposes. (See, e.g. 16 U.S.C. §§ 1455(a), 1456 and 15 C.F.R. Part 923, Subparts I, J and K, commencing at § 932.90 et seq.) Grants for administration of the management program are allocated on a state-by-state basis based on "the extent and nature of the shoreline and area covered by the program, population of the area, and other factors." (16 U.S.C. § 1455(c); see 15 C.F.R. Part 923, Subpart J for a discussion of these grant allocation factors.)

The CZMA and its implementing regulations also require the Governor of the State to designate a single state agency that will receive and administer grant funds to implement the state CMP. (16 U.S.C. § 1455(d)(6); 15 C.F.R. § 932.47.) The California Coastal Act designates the Coastal Commission as this agency. (Pub. Resources Code, § 30330.) Thus, currently the Coastal Commission is responsible for administering all CZMA grant funds. Pursuant to a memorandum of understanding with BCDC, the Coastal Commission acts as a pass through for BCDC's share of CZMA grant funds. The allocation of funds and BCDC's share is determined by informal agency agreement.

We have been informed by Coastal Commission and other agency staff that California currently is receiving the maximum amount of funds that it is entitled to receive for administration and implementation of its CMP under the CZMA. As a result, if California increases the scope of its CMP to include the delta, the additional financing necessary to support this expanded program would have to be provided by the state. Therefore, the primary advantage of having an approved delta segment of the state CMP would be the availability of state consistency review authority over federal agency activities and federal licenses and permits in the delta.

AS A RELATED QUESTION, CAN CALIFORNIA DEVELOP A NEW LIST OF FEDERAL LICENSES AND PERMITS SUBJECT TO THE CONSISTENCY CERTIFICATION REQUIREMENT OR MUST THE EXISTING LIST(S) BE AMENDED? IF THE LATTER, WHAT IS THE PROCESS FOR AMENDING THE EXISTING LIST(S)?

California currently has two separately approved lists of federal licenses and permits subject to state consistency certification requirements (one for the Coastal Commission and one for BCDC). Thus, there appears to be no reason why a third list could not be submitted for approval in conjunction with a delta segment of the state CMP. In fact, the CZMA regulations require a state to include a list of federal licenses and permits that would be subject to consistency certification as part of the management program submitted to OCRM for approval. (15 C.F.R. § 923.53(a)(2).) The CMP also may include the following: (1) a list of federal activities (including development projects) which the state management agency believes are likely to significantly affect the coastal zone and thus require a federal consistency determination; and (2) a description of the types of information and data necessary to assess consistency of federal license and permit activities with the state management program. (*Id.*, § 923.53(b).)

Alternatively, one of the existing lists for the Coastal Commission or BCDC could be amended and expanded to cover the delta CMP. The CZMA regulations provide that an existing state license and permit list may be amended after consultation with the affected federal agency and subject to OCRM approval, pursuant to the procedures for amending a state CMP. (15 C.F.R. § 930.53(c).)

4) COULD A NEW OR AMENDED CALIFORNIA CMP APPLY TO THE DELTA -I.E. COULD THE COASTAL ZONE BE EXPANDED TO INCLUDE THE DELTA?

It is likely that the existing California CMP could be amended to include at least a portion of the delta as part of California's "coastal zone," as defined by the CZMA and its implementing regulations. The requirements for OCRM approval of the *boundaries* of the coastal zone to be covered by a CMP or amended CMP are set forth in 15 C.F.R. Part 923,

Subpart D, § 923.30 et seq. To be approved, a state CMP must include "an identification of the boundaries of the coastal zone," as defined in the CZMA, that will be subject to the plan. (16 U.S.C. § 1455(d)(2)(A); 15 C.F.R. § 923.1(b)(4).) The CZMA defines the "coastal zone" to extend to inland areas "only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise." (16 U.S.C. § 1453(1).)

The CZMA regulations further explain the statutory definition and provide that the inland boundary identification *must* include, among other areas: (1) special management areas identified under section 923.21;³ (2) waters under saline influence (e.g. waters containing a significant quantity of seawater); and (3) salt marshes and wetlands subject to tidal innundation. (15 C.F.R. § 923.31(a).) The inland boundary identification *may* include, among other areas: (1) watersheds that "have a direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise"; and (2) "areas of tidal influence that extend further inland than waters under saline influence" such as "estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise." (*Id.*, § 923.31(b).)

We do not have the facts before us to make a determination of whether, or to what extent, the delta comes within these provisions. It would, however, appear that at least some portion of the delta could likely come within the definition of the "coastal zone." For example, applying the foregoing standards and criteria, it is possible that the entire legal delta (Water Code section 12220) could qualify as special management area, watershed or watersheds, and/or area of tidal influence extending further than saline influence subject either to mandatory or permissive boundary identification. Also, portions of the legal delta might qualify as waters under saline influence, salt marshes and wetlands subject to mandatory boundary identification. The criteria for permissive boundary identification in theory might also be applied to portions of the delta beyond the legal delta, provided it can be shown that these areas "could have a direct and significant impact on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise." (15 C.F.R. § 923.31(b).)

³ Such "special management areas" may include, among other regions, "areas of unique, scarce, fragile, or vulnerable natural habitat," "areas of high natural productivity or essential habitat" for fish and wildlife resources, including endangered species, "areas of substantial recreational value and/or opportunity," areas subject to flooding, geologic hazards, erosion, salt water intrusion, etc., and estuaries. (15 C.F.R. § 923.21(b).)

⁴ Note also that the CZMA excludes from the coastal zone "lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (16 U.S.C. § 1453(1).) The California Coastal Act definition of "coastal zone," however, is broader than the CZMA, inasmuch as it applies to private activities on federal

Again, determining whether any portion of the delta actually comes within the term "coastal zone" is beyond the scope of this memorandum. Moreover, as previously noted, establishing a new CMP segment for the delta likely will require legislative enactment of a new regulatory program for activities in the delta, as well as amendments to the California Coastal Act and McAteer Petris Act.

5) COULD A NEW CMP FOR THE DELTA INCLUDE THE BAY DELTA CONSERVATION PLAN?

Our research reveals nothing that would *prohibit* incorporation of the BDCP into a new California CMP segment for the delta, as long as the BDCP's substantive requirements, in combination with other provisions of a delta CMP segment, are enforceable and meet the other CMP approval requirements of the CZMA and its implementing regulations. Those requirements are reviewed in the first section of this memorandum starting on page 2.

As always, please feel free to contact me at 510-622-2136 if you have any additional questions. Thank you.

Sincerely,

[Original signed by]

TARA L. MUELLER Deputy Attorney General

For EDMUND G. BROWN JR. Attorney General

lands within the defined coastal zone. (Pub. Resources Code, § 30008 ["within federal lands excluded from the coastal zone pursuant to the Federal Coastal Zone Management Act of 1972, the State of California shall, consistent with applicable federal and state laws, continue to exercise the full range of powers, rights, and privileges it now possesses or which may be granted"].) Thus, presumably a CMP may be approved if it includes a broader, but not a narrower, definition of the coastal zone than in the CZMA and its implementing regulations, provided the state definition is consistent with the CZMA.

Mr. John Kirlin Executive Director September 8, 2008 Page 13

cc:

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CZMA

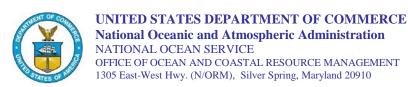
FEDERAL CONSISTENCY OVERVIEW

SECTION 307 OF THE COASTAL ZONE MANAGEMENT ACT OF 1972

FEBRUARY 20, 2009

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT





FEDERAL CONSISTENCY OVERVIEW*

February 20, 2009

Office of Ocean and Coastal Resource Management (OCRM)
National Ocean Service (NOS)
National Oceanic and Atmospheric Administration (NOAA)

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I. INTRODUCTION

This document is an overview of the Coastal Zone Management Act (CZMA) federal consistency provision and is the principal educational material used in OCRM's Federal Consistency Workshops. This overview is for general information and educational purposes only; it is not an enforceable document or intended to establish policy and should not be cited to for CZMA compliance purposes. The CZMA and National Oceanic and Atmospheric Administration (NOAA) regulations contain the information needed for CZMA compliance, *see* CZMA § 307 (16 U.S.C. § 1456) and NOAA's federal consistency regulations, 15 C.F.R. part 930. This Federal Consistency Overview, the statute, the regulations, state and federal contacts and other information are located on OCRM's Federal Consistency web page at:

http://coastalmanagement.noaa.gov/consistency/welcome.html

The CZMA was enacted on October 27, 1972, to encourage coastal states, Great Lake states, and U.S. Territories and Commonwealths (collectively referred to as "coastal states" or "states") to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the importance of balancing the competing uses of those resources. The CZMA is a voluntary program for states. If a state elects to participate it develops and implements a coastal management program (CMP) pursuant to federal requirements. *See* CZMA § 306(d); 15 C.F.R. part 923. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the state's coastal zone, the organization of the management program, and related state coastal management concerns. The state CMPs are developed with the participation of Federal agencies, state and local agencies, industry, other interested groups and the public. Thirty-five coastal states are eligible to participate in the federal coastal management program. Thirty-four of the eligible states have federally approved CMPs. Illinois is currently developing a CMP.

The CZMA federal consistency provision is a cornerstone of the CZMA program and a primary incentive for states' participation. Federal consistency provides states with an important tool to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies. Under the CZMA Federal agency activities that have coastal effects are consistent to the maximum extent practicable with federally approved enforceable policies of a state's CMP. In addition, the statute requires non-federal applicants for federal authorizations and funding to be consistent with enforceable policies of state CMPs.

A lead state agency coordinates a state's federally approved CMP and federal consistency reviews. At the federal level, OCRM, within NOAA/NOS, among other duties and services, oversees the application of federal consistency; provides management and legal assistance to coastal states, Federal agencies, Tribes and others; and mediates CZMA related disputes. NOAA's Office of General Counsel for Ocean Services assists OCRM and processes appeals to the Secretary of Commerce.

NOAA's federal consistency regulations were first issued in 1979. The regulations were substantially revised in 2000. *See* 65 Fed. Reg. 77123-77175 (Dec. 8, 2000). The 2000 revisions were largely in response to the 1990 amendments to the CZMA, *see* Pub. L. No. 101-508 and related Conference Report, H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess., 970-972 (Conference Report). The regulations were further revised in 2006 in response to *The National Energy Policy Development Group's Report* (May 2001) (Energy Report) and the *Energy Policy Act of 2005* (Pub. L. No. 109-58) (EPAct). *See* 71 Fed. Reg. 787-831 (Jan. 5, 2006) and 71 Fed. Reg. 75864-75865 (Dec. 19, 2006).

II. DEFINITION

Federal consistency is the CZMA provision that *federal actions* that have reasonably foreseeable *effects* on any *land or water use* or *natural resource* of the coastal zone (also referred to as coastal uses or resources, or coastal effects) should be consistent with the *enforceable policies* of a coastal state's federally approved CMP. These terms are described below.

- **A. Federal actions:** There are four types of federal actions: Federal agency activities, federal license or permit activities, outer continental shelf (OCS) plans, and federal assistance to state and local governments.
 - 1. *Federal agency activities* activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency. 15 C.F.R. part 930, subpart C.
 - E.g., Fisheries Plans by the National Marine Fisheries Service, Naval exercises, the disposal of federal land by the General Services Administration, a U.S. Army Corps of Engineers (Corps) breakwater or beach renourishment project, an OCS oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, activities in National Parks such as installation of mooring buoys or road construction;
 - 2. *Federal license or permit activities* activities performed by a non-Federal entity requiring federal permits, licenses or other form of federal authorization. 15 C.F.R. part 930, subpart D.
 - E.g., activities requiring Corps 404 permits, Corps permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, licenses from the Federal Energy Regulatory Commission (FERC) for hydroelectric facilities;
 - 3. *OCS plans* MMS approvals for OCS plans, pursuant to the Outer Continental Shelf Lands Act. The CZMA process is similar to federal license or permit activities. 15 C.F.R. part 930, subpart E.
 - 4. Federal assistance to state and local governments. 15 C.F.R. part 930, subpart F.
 - E.g., Federal Highway Administration funds to coastal state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, Housing and Urban Development grants.

B. Coastal Effects:

At the heart of federal consistency is the "effects test." A federal action is subject to CZMA federal consistency requirements if the action will affect a coastal use or resource, in accordance with NOAA's regulations. NOAA's regulations, 15 C.F.R. § 930.11(g), define coastal effects as:

The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

As described in the preamble to the 2000 revisions to NOAA's consistency regulations, the definition of the effects test is from the 1990 amendments to the CZMA. These amendments, in part, replaced the phrase "directly affecting the coastal zone," reflecting Congressional intent to overturn the effect of *Secretary of the Interior v. California*, 464 U.S. 312 (1984). *See* 136 Cong. Rec. H 8076 (Sep. 26, 1990). The 1990 CZMA amendments also clarified that all federal agency activities meeting the "effects" standard are subject to CZMA consistency and that there are no exceptions, exclusions or categorical exemptions from the requirement. Conference Report at 970-71; 136 Cong. Rec. H 8076 (Sep. 26, 1990). The Conference Report further informed NOAA's 2000 regulatory revisions by stating that:

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

The effects test applies to activities and uses or resources that occur outside a state's coastal zone, so long as the uses or resources impacted are, in fact, uses or resources of a state's coastal zone. The burden for determining or demonstrating effects is greater the farther removed an activity takes place outside of a state's coastal zone. The test is whether it is reasonably foreseeable that impacts that occur outside of the coastal zone will affect uses and resources of the coastal zone. Merely showing impacts from an activity outside of the coastal zone should not be sufficient by itself to demonstrate that reasonably foreseeable effects extend to uses or resources of the coastal zone. As NOAA explained in its 2000 Final Rule amending the federal consistency regulations (65 Fed. Reg. 77130 (Dec. 8, 2000)):

[T]he effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, e.g., temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone.

C. Enforceable policies:

An enforceable policy is a state policy that is legally binding under state law (e.g., through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions), and by which a state exerts control over private and public coastal uses and resources, and which are incorporated in a state's federally approved CMP. CZMA § 304(6a) and 15 C.F.R. § 930.11(h). OCRM has informed states that enforceable policies are given legal effect by state law and do not apply to federal lands, federal waters, federal agencies or other areas or entities outside a state's jurisdiction, unless authorized by federal law (the CZMA does not confer such authorization).

Early coordination and identification of applicable state CMP enforceable policies is key to ensuring that Federal agencies and applicants address state policies and issues. Early coordination will also help determine what measures, if any, need to be taken so that the activity is consistent with the state policies.

OCRM approves the incorporation of enforceable policies, and changes to enforceable policies, into state CMPs. See CZMA §§ 306(d) and 306(e). The program change process serves an important notice and review purpose in the CZMA state-federal partnership. In return for the federal consistency authority granted to states, federal agencies are provided with an opportunity to review and comment on the development of a state's CMP and on subsequent changes to the CMP. This also means that a policy should not become an enforceable policy of a state's CMP by "incorporation by reference." For example, OCRM has approved the incorporation of enforceable policy "A" into a state's CMP. Policy A references another policy "B" that has not been submitted to OCRM for approval. Policy B, even though it is referenced in policy A is not an enforceable policy of the state's federally approved CMP, because policy B has not gone through the program change approval process, giving OCRM, Federal agencies and the public an opportunity to comment. The incorporation of policy B into a state's CMP would have to be approved by OCRM to become an enforceable policy of a state's federally approved CMP. OCRM, using its program change regulations (15 C.F.R. part 923, subpart H) and Program Change Guidance (July 1996), evaluates states' proposed enforceable policies as described below.

1. Policies are legally binding under state law and apply only to areas and entities within the state's jurisdiction. CZMA § 304(6a).

<u>Approval Consideration:</u> (1) A wetlands protection policy in a state statute, regulation or in a state's CMP program document is an enforceable policy if the statute or regulation contains a mechanism that imposes the policy on the public and private uses within the state's jurisdiction. This could be a state permit program or a provision in state law that requires all state agencies to apply the policy in their permit and enforcement actions. A policy in a state's CMP program document should also be linked to such a statutory or regulatory enforceable mechanism.

(2) The CZMA does not authorize states to establish regulatory standards for Federal agencies. A state policy that would regulate or otherwise establish standards for Federal agencies or federal lands or waters would not meet the CZMA's definition of "enforceable policy" (i.e., legally binding under state law). CZMA § 304(6a). States apply their federally approved enforceable policies through CZMA federal consistency reviews. Federal agencies are consistent to the maximum extent practicable and non-Federal applicants for federal authorizations are fully consistent with the enforceable policies.

Applicability Consideration: Some state CMP consistency decisions are made by issuance or denial of state permits (the states' enforceable policies are contained within the standards of the states' permit programs). However, a state should not determine consistency by issuance of a state permit for Federal agency activities under CZMA § 307(c)(1). Under NOAA's regulations, neither the CZMA nor OCRM's approval of a state's enforceable policy or permit program authorize the application of state permit requirements to Federal agencies. The Federal agencies are consistent to the maximum extent practicable with the underlying enforceable policies of the state permit program, but do not have to apply for or obtain the state permit (unless another federal law requires the federal agency to obtain the permit). Non-federal applicants for federal license or permit activities would have to apply for and obtain the applicable state permit for state CZMA concurrence where the proposed activity is located within the state's jurisdiction.

2. Policies are not preempted by Federal law. See OCRM's Program Change Guidance, section II.D.

<u>Approval Consideration</u>: Federal preemption is the principle, derived from the Supremacy Clause of the Constitution, that a federal law can supersede or supplant any inconsistent state law or regulation. Preemption applies to state law and not other federal law. OCRM's long-standing interpretation of the

definition of "enforceable policy" under the CZMA (16 U.S.C. § 1453(6a)) is that if a state policy specifically seeks to regulate an activity where state regulation is preempted by federal law, it is not legally binding under state law and would not be an enforceable policy under the CZMA. For example, North Carolina sought to regulate low level aircraft in flight by adopting policies that imposed minimum altitude and decibel levels, and other overflight restrictions. OCRM denied the state's request to incorporate these policies into the North Carolina CMP because the policies were, on their face, preempted by federal law administered by the Federal Aviation Administration.

<u>Applicability Consideration</u>: Under the federal consistency authority, states apply NOAA-approved enforceable policies to federal actions. If a state's enforceable policies, as specifically described or applied, are not preempted, the state may apply them through CZMA federal consistency to a preempted field. It should be noted that whether state action is preempted is a fact-specific inquiry.

3. Policies should be applied to all relevant public and private entities and would not discriminate against a particular type of activity, or, even if neutrally written, against a particular Federal agency. *Id.*

Approval Consideration: State policies should be based on effects to coastal uses or resources and not on a particular type of activity. This ensures that the policy is applicable to any type of activity that has coastal effects and will not discriminate against a particular user group. For example, a state was concerned with possible impacts from offshore oil and gas development on specific fishing areas and on discharges that might follow ocean currents and eddies into the state's estuarine areas. The state proposed oil and gas specific energy policies. OCRM did not approve the policies because they imposed requirements on one user group, when other types of activities might have the same coastal impacts. The state re-wrote the policies to be based on coastal impacts and information needs to assess such impacts. Now the policies are applicable to all OCS energy projects and other activities having similar effects.

4. Policies are consistent with CZMA federal consistency requirements. OCRM's *Program Change Guidance*, section II.D; *see also id.* at Appendix B.5. (federal consistency procedures).

Approval Consideration: When state policies are proposed to be incorporated into a CMP, a state should ensure that the CMP continues to balance the objectives of the CZMA and continue to give priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation. See CZMA § 303(2)(D). Policies affecting these "national interests" have implications for federal consistency. For example, a state has a policy that opposes all offshore oil and gas development. OCRM did not approve the incorporation of the policy into the state's federally approved CMP, because OCRM determined the policy would affect the state's obligation to consider the national interest in energy facility siting.

Applicability Consideration: States should not require a Federal agency to redefine an activity proposed by a Federal agency. For Federal agency activities under CZMA § 307(c)(1), states review activities and development projects that are *proposed* by a Federal agency. 15 C.F.R. § 930.36(a). *See also*, *e.g.*, 15 C.F.R. §§ 930.35, .39(a), .46(a), .1(c), .11(d); 65 Fed. Reg. 77130, Col. 2-3 (December 8, 2000) (preamble to final 2000 rule). For example, a state proposed a policy that, when dredged material is not suitable for beach renourishment, would require a dredger to obtain suitable material from a location not related to the dredging to renourish the beaches. OCRM did not approve the policy as written because it would redefine, in part, an Army Corps of Engineers dredging project to a beach renourishment project that is not related to the dredging. The policy was re-written to tie beach renourishment and the alternate source of material to mitigate impacts to coastal uses or resources resulting from proposed dredging.

- **D.** Coastal uses: Some examples of coastal uses include such activities as: public access, recreation, fishing, historic or cultural preservation, development, energy infrastructure and use, hazards management, marinas, floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration.
- **E. Coastal resources:** Coastal resources include biological or physical resources that are found within a state's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, and reptiles, etc.

III. BENEFITS

Federal consistency is an important mandatory, but flexible mechanism to foster consultation, cooperation, and coordination between states and Federal agencies. Federal consistency is more than just a procedural dictate; it helps ensure the balanced use and protection of coastal resources through state CMP policies.

To maximize the benefits of federal consistency, Federal agencies should provide routine notification to coastal states of actions affecting the coastal zone, and coastal states should pay attention to proposed federal actions, develop adequate consistency procedures, and notify Federal agencies, other state agencies, and others of a state's assertion of consistency. For example, states could make connections with the Federal agencies, inform them of the federal consistency requirements, possibly develop memoranda of understanding (MOUs), ensure that the CMP obtains notice, and respond when the CMP does receive notice. In summary, Federal agencies and others have an affirmative duty to comply with the federal consistency requirements, but states should take consistent and assertive steps.

Federal consistency provides Federal agencies with an effective mechanism to document coastal effects and to address state coastal management concerns. Moreover, compliance with the consistency requirement complements National Environmental Policy Act (NEPA) compliance. Even though the CZMA effects test is different than NEPA investigations and the CZMA requires Federal agencies to alter projects to be consistent with state CMP policies, NEPA is an effective delivery mechanism for federal consistency. (States do not review NEPA documents for consistency – they review the federal action a NEPA document evaluates, but NEPA documents often provide necessary background information.)

Early attention to federal consistency can provide the Federal agency with state CMP and public support and a smoother and expeditious federal consistency review. Early consultation and cooperation between Federal agencies and state CMPs can help Federal agencies avoid costly last minute changes to projects in order to comply with state CMP policies.

States concur with approximately 93-95% of all federal actions reviewed. Maintaining this percentage means that states and Federal agencies should know their consistency responsibilities and develop cooperative relationships to foster effective coordination and consultation.

IV. NATIONAL INTEREST CONSIDERATIONS

Federal consistency gives states substantial input into federal actions affecting the coastal zone. There are, however, provisions that balance state objectives with consideration of federal objectives and mandates to ensure that the national interest in CZMA objectives is furthered. These considerations include:

Consistency must be based on coastal effects. While the federal consistency effects test covers a wide range of federal actions, federal consistency review is triggered when it is reasonably foreseeable that a federal action will have coastal effects, referred to as the "effects test." Consistency does not apply to every action or authorization of a Federal agency, or of a non-federal applicant for federal authorizations. For Federal agency activities, a Federal agency makes this determination of whether its activity will have coastal effects. Under NOAA's regulations, a "function" by a Federal agency refers to a proposal for action that has reasonably foreseeable coastal effects, and not to all tasks, ministerial activities, meetings, discussions, exchanges of views, and interim or preliminary activities incidental or related to a proposed action. For federal license or permit activities and federal assistance activities, state CMPs propose to review activities that will have coastal effects and OCRM makes the determination of effects by approving the *lists* of federal authorizations and financial assistance programs that a state wishes to include in its CMP. In order to be on the list, the types of activities covered by the federal authorization or funding program should have reasonably foreseeable coastal effects on a regular basis. Federal agencies and other interested parties have input into OCRM's approval of such lists and additions to the lists. If a state wishes to review an *unlisted* federal license or permit activity, it notifies the applicant and the Federal agency and seeks OCRM approval to review the activity. OCRM's decision is based on whether the state has shown that an unlisted activity will have reasonably foreseeable coastal effects and, again, Federal agencies and the applicant have an opportunity to comment to OCRM.

Federally approved programs and state CMP enforceable policies. OCRM, with the opportunity for input from Federal agencies, local governments, industry, non-governmental organizations and the public, approves state CMPs and their enforceable policies, including subsequent changes to a state's CMP.

Consistent to the maximum extent practicable (only applies to Federal agency activities). NOAA's regulations define "consistent to the maximum extent practicable" to mean a Federal agency activity is fully consistent with the enforceable policies of a state's CMP unless federal legal requirements prohibit full consistency. This ensures that Federal agencies are able to meet their legally authorized mandates, even though the activity may not be consistent with a state's enforceable policy. If a Federal agency has the discretion to meet a state's enforceable policy, then it should be consistent with that policy. However, a Federal agency's administrative record applying its legal mandates may dictate an action that is not fully consistent with a state's policy. Thus, for Federal agency activities under CZMA § 307(c)(1), a Federal agency may proceed with an activity over a state's objection if the Federal agency determines its activity is consistent to the maximum extent practicable with the enforceable policies of the state's CMP.

For example, this means that even if a state objects, the Minerals Management Service (MMS) may proceed with an OCS lease sale when MMS provides the state with the reasons why the Outer Continental Shelf Lands Act (OCSLA) and MMS's administrative record supporting the lease sale decision prohibits MMS from fully complying with the state's enforceable policies.

Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to "exigent circumstances." An exigent circumstance is an emergency or unexpected situation requiring a Federal agency to take quick or immediate action.

In addition, as part of its consistent to the maximum extent practicable argument, MMS could proceed if it determined that its activity was *fully* consistent with the State's enforceable policies. *See* 15 C.F.R. § 930.43(d). In either case, the Federal agency provides the state CMP agency with a written notice that it is proceeding over the state's objection and explains why the activity is consistent to the maximum extent practicable.

Consistent to the maximum extent practicable and exigent circumstances refers to consistency with a state CMP's substantive requirements as well as the procedural requirements of NOAA's regulations. There may be times that a federal legal requirement or an emergency situation requires a Federal agency to act sooner than the end of the 90-day consistency period. In such cases, the Federal agency should consult with the state CMP as early as possible.

A Federal agency should not use a lack of funds as a basis for being consistent to the maximum extent practicable. Thus, Federal agencies are encouraged to consult early with state CMPs to ensure that the Federal agency has budgeted for meeting state CMP enforceable policies.

Appeal state objection to Secretary of Commerce (only for Non-Federal applicants). Non-federal applicants for federal license or permits and state and local government applicants for federal financial assistance may appeal a state's objection to the Secretary of Commerce. Appeals to the Secretary are not available for Federal agency activities. The Secretary overrides a state's objection if the Secretary finds that an activity is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security. If the Secretary overrides a state's objection, then the Federal agency may authorize the activity. The Secretarial appeal process is discussed in more detail later in this document. There is also a database of all appeals filed with the Secretary on OCRM's Federal Consistency web page.

Presidential exemption (only for Federal agency activities). After any appealable final judgment, decree, or order of any Federal court, the President may exempt from compliance the elements of a Federal agency activity that are found by a Federal court to be inconsistent with a state's CMP, if the President determines that the activity is in the paramount interest of the United States. CZMA § 307(c)(1)(B). This exemption was added to the statute in 1990 and has been used once. In 2007, the California Coastal Commission (CCC) objected to Navy's use of Mid-Frequency Active (MFA) sonar asserting Navy's mitigation measures were not adequate to protect marine mammals. This eventually resulted in President Bush, on January 15, 2008, using his statutory authority under the CZMA to exempt from compliance certain MFA sonar activities by the Navy that a federal court determined were not consistent with the State of California's federally-approved CZMA program.

Mediation by the Secretary or OCRM. Mediation has been used to resolve federal consistency disputes and allowed federal actions to proceed. In the event of a serious disagreement between a Federal agency and a state, either party may request that the Secretary of Commerce mediate the dispute. OCRM is also available to mediate disputes between states, Federal agencies, and other parties.

V. BASIC FEDERAL CONSISTENCY PROCEDURES

Two important things to keep in mind to facilitate consistency reviews is for the Federal agency, state CMP, and applicant to discuss a proposed activity as early in the process as possible, and that state CMPs and Federal agencies can agree, at any time, to more flexible consistency review procedures (providing public participation requirements are still met).

See Appendix A for a chart summary of the consistency requirements, and Appendices B and C for flow charts for Federal agency activities and Federal license or permit activities.

A. Federal Agency Activities and Development Projects

Federal agencies proposing an activity should follow the requirements of CZMA § 307(c)(1), (2)(16 U.S.C. § 1456(c)(1), (2)) and 15 C.F.R. part 930, subparts A, B and C. For example:

- 1. Federal "development projects" *inside* the boundaries of a state's coastal zone are deemed to have coastal effects and a Consistency Determination should be submitted to the state CMP.
- 2. Federal agency determines if a federal activity (in or outside coastal zone) (and development projects outside the coastal zone) will have reasonably foreseeable coastal effects. States are encouraged to list Federal agency activities that are expected to affect coastal uses or resources in their approved CMPs, and to monitor unlisted activities and to notify Federal agencies when an unlisted activity should undergo consistency review.

For Federal agency activities, the listed/unlisted provisions in NOAA's regulations are recommended procedures for facilitating state-federal coordination. Whether or not an activity is listed, Federal agencies provide state CMPs with Consistency Determinations (CDs) for Federal agency activities affecting any coastal use or resource. Because Federal agencies have an affirmative statutory duty to provide states with CDs for activities with reasonably foreseeable coastal effects and because the statute requires state CMP agencies to provide an opportunity for public input into a state's consistency decision, a state should not relieve the Federal agency or itself of consistency obligations by listing or not listing a Federal agency activity. If a state and/or a Federal agency believe that a type of Federal agency activity should not be subject to federal consistency, then they may use the applicable provisions provided in NOAA's regulations: general permits (§930.31(d)); *de minimis* activities (§930.33(a)(3)); environmentally beneficial activities (§930.33(a)(4)); general consistency determinations (§930.36(c)); negative determinations and general negative determinations (§930.35).

- 3. The Federal agency should contact the state CMP at the earliest possible moment in the planning of the activity to ensure early state-Federal coordination and consultation.
- 4. If coastal effects are reasonably foreseeable, then the Federal agency submits a Consistency Determination (CD) to a state CMP at least 90 days before activity starts. A CD should include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the state's CMP. The Federal agency does not need to submit anything beyond that described in 15 C.F.R. § 930.39 and may submit that information in any manner it chooses. Finally, Federal agencies provide, and states review, CDs only for the Federal agency's proposed action for consistency Federal agencies should not provide, and states should not review, CDs for NEPA documents, ESA consultations, federal permits the federal agency may need, etc., that are related to the proposed activity. These items may, of course be useful to the Federal agency and state as part of the background information the Federal agency may provide with its CD, but they should not be the subject of a separate CZMA review.

Once a complete CD has been received by a state CMP, the state should not delay the start of the 90-day CZMA review period by requiring information that is in addition to the information required by \$930.39 or that the Federal agency apply for or obtain a state permit. If the state CMP agency believes that the information required by \$930.39 has not been submitted, it should immediately notify the Federal agency.

- 5. If no coastal effects, a Federal agency may provide a Negative Determination. See 15 C.F.R. § 930.35.
- 6. State CMP has 60 days (plus appropriate extensions) to concur with or object to a Federal agency's CD. State CMP agency and Federal agency may agree to alternative time period. Any such agreement should be set forth in writing so that it is clear there is a meeting-of-the-minds between a state and

Federal agency. Ideally, the written agreement should be one document that both parties sign. The written agreement should refer to a specific end date and should not be written to require a later event or condition to be satisfied.

- 7. State CMP should provide for public comment on the state's consistency review. A state should not rely on a Federal agency notice, unless the Federal agency notice specifically says that comments on the *state CMP's consistency review* should be sent to the state CMP agency.
- 8. State concurrence is presumed if the state does not meet time frames.
- 9. If a state CMP agrees with a CD, then the Federal agency may immediately proceed with the activity. If a state objects, then the state's objection should describe how the proposed activity is inconsistent with specific enforceable policies of the federally approved CMP. In the event of an objection, a state CMP and Federal agency should attempt to resolve any differences during the remainder of the 90-day period. If resolution has not been reached at the end of the 90-day period the Federal agency should consider postponing final federal action until conflicts have been resolved. However, at the end of the 90-day period a Federal agency may, notwithstanding state CMP objection, proceed with the activity if the Federal agency clearly describes, in writing, to the state CMP how the activity is consistent to the maximum extent practicable.
- 10. If there is a dispute between a Federal agency and state CMP, either party may seek mediation by OCRM or the Secretary of Commerce (the Secretary's mediation is a more formal process).

B. Federal License or Permit Activities

A private individual or business, or a state or local government agency, or any other type of *non-federal* entity, applying to the federal government for a required permit or license or any other type of authorization, is subject to the requirements of CZMA § 307(c)(3)(A)(16 U.S.C. § 1456(c)(3)(A)) and 15 C.F.R. part 930, subparts A, B and D. This includes American Indian and Alaska Native entities applying for federal authorizations. ¹

There are essentially four elements for determining that an authorization from a Federal agency is a "federal license or permit" subject to federal consistency review. First, federal law requires that an applicant obtain a federal authorization. Second, the purpose of the federal authorization is to allow a non-federal applicant to conduct a proposed activity. Third, the activity proposed has reasonably foreseeable effects on a state's coastal uses or resources, and fourth, the proposed activity was not previously reviewed for federal consistency by the state CMP agency (unless the authorization is a renewal or major amendment pursuant to §930.51(b)). These four elements are embodied in NOAA's regulations as discussed below:

- 1. State CMP, with OCRM approval, determines effects:
 - a. listed v. unlisted activity; and b. inside v. outside coastal zone.

¹ NOAA's regulations do not specifically include American Indians and Alaska Natives in the definition of applicant, *see* 15 C.F.R. § 930.52. However, the statute has been interpreted by OCRM and federal courts to apply to American Indians and Alaska Natives. *See Narragansett Indian Tribe of Rhode Island v. The Narragansett Electric Comp.*, 878 F. Supp. 349, 362-365 (D. RI 1995), *upheld on other grounds*, 89 F.3d 908 (1st Cir. 1996).

All federal license or permit activities occurring in the coastal zone are deemed to affect coastal uses or resources if the state CMP has *listed* the particular federal license, permit or authorization in its federally approved CMP. The lists may be updated through OCRM's program change process. Prior to submitting the updated list to OCRM the state should consult with the relevant Federal agency.

For a *listed* activity occurring *in the coastal zone*, the applicant submits a Consistency Certification to the authorizing Federal agency and the affected state CMP(s). In addition to the Certification, the applicant provides the state with the *necessary data and information* required by NOAA's regulations at 15 C.F.R. § 930.58. This information will usually be contained in the application to the Federal agency, but may include other information described by a state CMP, if the information is *specifically included in the state's federally approved CMP document and identified as "necessary data and information.*" If a state wants to require information needed to commence the six-month review period in addition to that described by NOAA in §930.58(a), the state should amend its CMP to identify specific "necessary data and information" pursuant to §930.58(a)(2).

For *listed* activities *outside the coastal zone*, an applicant submits a Consistency Certification to the state CMP and the Federal agency if the activity falls within a *geographic location* described in a state's CMP for listed activities outside the coastal zone. For listed activities outside the coastal zone where a state has *not* described a geographic location, a state CMP may follow the unlisted activity procedure described below, if it wants to review the activity.

For unlisted activities, in or outside the coastal zone, a state CMP may notify the applicant, the relevant Federal agency, and OCRM that it intends to review an unlisted activity on a case-by-case basis. The state CMP makes this notification within 30 days of receiving notice of the application to the Federal agency for an activity; otherwise the state waives its consistency rights. The waiver does not apply where the state CMP does not receive notice (notice may be actual or constructive). OCRM may approve the state's consistency review. The applicant and the Federal agency have 15 days from receipt of a state CMP's request to provide comments to OCRM. OCRM makes a decision usually within 30 days of receipt of a state's request. The basis for OCRM's decision is whether the proposed activity will have reasonably foreseeable coastal effects. The Federal agency may not authorize the activity until the consistency process is complete. The unlisted activity procedure is available for active applications. If an applicant, of its own accord, provides a state CMP with a consistency certification for an unlisted activity, then OCRM's

² For example, constructive notice may be provided if it is published in an official federal public notification document or through an official state clearinghouse. For either form of notice, the notices contain sufficient information for a state CMP agency to learn of the application for the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

A newspaper article containing the information required by 15 C.F.R. § 930.54(a)(2) may provide notice. However, even assuming a newspaper article, or other similar form of notice, describes the activity and its location with sufficient specificity for a state to determine whether coastal effects are reasonably foreseeable, such notice should verify that an application was received by a Federal agency. For example, receipt of an application may be verified if a Federal agency spokesperson was quoted in the article stating that the agency had received the application for the federal authorization. Statements by other sources as to whether a Federal agency received the application could be speculative. If a statement by a Federal official is not in the article, then once the state CMP agency read the article, it could seek to verify whether the Federal agency received an application. The 30-day notification period could begin when a state CMP agency verified that a federal application was filed.

approval is deemed and the applicant is subject to all the relevant provisions of the regulations and the state CMP need not seek OCRM's approval. (The authorizing federal agency should not require an applicant to provide a consistency certification if the applicant is not otherwise required to by NOAA's regulations.)

- 2. Applicant for any required federal authorization submits a Consistency Certification and necessary data and information to the state CMP. State CMP agency should document when this date occurs. State CMP agency has 30 days to notify the applicant and Federal agency that the submission does not include the necessary data and information. If a state CMP agency does not respond within the 30-day period, the six-month review period begins when the state CMP agency received the applicant's initial CZMA submission, regardless of whether the submission contained all necessary data and information.
- 3. The six-month review period can *only* begin if an applicant has filed a formal application with a licensing federal agency and has submitted a Consistency Certification to the state CMP agency. When an applicant should submit its Consistency Certification and necessary data and information may vary depending on when information is available. For instance, an applicant may choose not to submit its Consistency Certification at the same time it files its application with the licensing federal agency, but will submit the Consistency Certification after filing the federal application later to ensure information the state needs is included (otherwise a state may choose to object for lack of information if the Consistency Certification is filed too soon). Under the CZMA, a Project applicant must provide the state with a Consistency Certification within its application for a Federal license or permit. 16 U.S.C. § 1456(c)(3)(A). At the same time the applicant includes the consistency certification in its application, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Id. The phrase, "within its application" does not mean that the Consistency Certification must be filed at the time the application is filed; rather that the application must at some time "include" the certification and shall provide the certification to the state "at the same time." This has been long-standing practice by states and applicants. Once the consistency certification and necessary data and information are received by a state, a state then has six months in which to review the Project for consistency with its coastal management program. Id.
- 4. State CMP has six months to respond, but notifies applicant if review will go beyond three months.
- 5. Applicant and state CMP agency may agree to stay the six-month review period. A stay "tolls" the running of the six-month review period for an agreed upon time ending on a specific date, after which the remainder of the six-month review period would continue. Such agreements are set forth in writing so that it is clear there is a meeting-of-the-minds between the state and the applicant. Ideally, the written agreement should be one document that both parties sign. The written agreement for a stay should specify five (5) dates:
 - 1. Date the state's 6-month review period commenced;
 - 2. Date the 6-month period was to end;
 - 3. Date during the 6-month review period that the stay begins;
 - 4. Date that the stay ends; and
 - 5. Date the state's decision is due. For example, the 6-month period was to end June 30 and a stay was executed beginning on June 1 and ending on September 1. There are 30 days left in the 6-month review period. Therefore, the state's decision would now be due September 30 (30 days after the ends). Stays should not be written to require a later event or condition to be satisfied to end the stay. If a state objects to an applicant's project and the applicant appeals to the Secretary of Commerce, failure to follow these instructions could result in the Secretary

overriding the state's objection because the state's objection was issued after the six-month review period due to an unsupportable stay agreement.

- 6. The state should provide for public comment (state can require applicant to publish notice or may combine notice with Federal agency, if Federal agency agrees).
- 7. State concurrence presumed if state does not meet six-month time frame.
- 8. If state objects, Federal agency does not authorize the activity to commence. If a state issues a conditional concurrence and the applicant does not amend its federal application to include a state's conditions, a state's conditional concurrence automatically becomes an objection. (State conditions of concurrence are linked to the need to be consistent with specific state enforceable policies.)
- 9. Applicant may appeal a state's objection to the Secretary of Commerce within 30 days of the objection. If the Secretary overrides a state's objection, the Federal agency may authorize the project. If the Secretary does not override a state's objection, the Federal agency does not authorize the project. The Secretary's decision is final federal agency action for purposes of the Administrative Procedure Act. An applicant may also negotiate with a state to remove the state's objection.

C. OCS Plans

A private person or business applying to the U.S. Department of the Interior's Minerals Management Service (MMS) for outer continental shelf (OCS) exploration, and development and production activities follows the requirements of CZMA § 307(c)(3)(B)(16 U.S.C. § 1456(c)(3)(B)) and 15 C.F.R. part 930, subparts A, B and E. For example:

- 1. Any person who submits to MMS an OCS plan for the exploration of, or development and production of, any area leased under the Outer Continental Shelf Lands Act, certifies that any activities described in detail in such OCS plans will be conducted in a manner consistent with the state CMPs. MMS then sends the plan and consistency certification to the applicable state(s).
- 2. The process and requirements for this section generally mirror those of federal license or permit activities. State should notify applicant if state review will extend beyond three months, otherwise state's concurrence is presumed.
- 3. Determining whether a particular OCS oil and gas plan is subject to state CZMA review differs somewhat from federal license or permit activities in that, generally, states have not had to describe geographic areas in federal waters where OCS oil and gas plans would be subject to state CZMA review. This is because the CZMA mandates such reviews and initially OCS oil and gas projects were not far offshore. As the industry moves farther offshore, whether a state should have CZMA review may not be as easily determined. As described in the preamble to NOAA's Final Rule for the 2006 amendments to the regulations (71 Fed. Reg. 790 (Jan. 5, 2006)):

For OCS EP's and DPP's the CZMA mandates State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops at the point where coastal effects are not reasonably foreseeable. Whether coastal effects are reasonably foreseeable is a factual matter to be determined by the State, the applicant and MMS on a case-by-case basis. If a State wanted to ensure that OCS EP's and DPP's located in a particular offshore area would be subject to State CZMA review automatically, a State could, if NOAA

approved, amend its CMP to specifically describe a geographic location outside the State's coastal zone where such plans would be presumed to affect State coastal uses or resources. See 15 CFR § 930.53. Or, if a State wanted to review an EP or DPP where the applicant and/or MMS have asserted that coastal effects are not reasonably foreseeable, the State could request approval from NOAA to review such plans on a case-by-case basis. See 15 CFR § 930.54 (unlisted activities). In both situations, NOAA would approve only if the State made a factual demonstration that effects on its coastal uses or resources are reasonably foreseeable as a result of activities authorized by a particular EP or DPP. Similarly, where the applicant or FERC has asserted that a proposed project located outside the coastal zone or outside a geographic location described in a state's management program pursuant to 15 CFR § 930.53, will not have reasonably foreseeable coastal effects, NOAA would not approve a State request to review the project unless the State made a factual demonstration that the project has reasonably foreseeable coastal effects.

D. Federal Assistance Activities

A state agency or local government applying for federal financial assistance follows the requirements of CZMA § 307(d)(16 U.S.C. § 1456(d)) and 15 C.F.R. part 930, subparts A, B and F. For example:

- 1. States list in their CMPs the federal assistance activities subject to review. The state CMP may also notify an applicant agency and Federal agency that it will review an unlisted activity. OCRM approval is not required for the review of unlisted federal assistance activities.
- 2. NOAA regulations allow state CMPs to develop flexible procedures for reviewing and concurring with federal assistance activities. State CMP review of the activities is normally conducted through procedures established by states pursuant to Executive Order 12372 -- intergovernmental review of federal programs, or through state clearinghouse procedures.
- 3. Federal agency does not authorize the use of federal funds until state CMP has concurred.
- 4. State or local government applicant agency may appeal a state objection to the Secretary of Commerce who may override the state's objection.

E. Other Federal Actions

The Federal agency activity category, 15 C.F.R. part 930, subpart C, is a "residual" category. A federal action that will have reasonably foreseeable coastal effects, but which does not fall under 15 C.F.R. part 930, subpart D (federal license or permit), subpart E (OCS plans), or subpart F (federal assistance to state agency or local government), is a Federal agency activity under subpart C. For example, if a Federal agency is providing funds to a private citizen for disaster relief from a hurricane, and the funds will be used for an activity with coastal effects, then the Federal agency follows the requirements for Federal agency activities and provides the state CMP with a Consistency Determination.

F. Mediation of Disputes

In the event of a serious disagreement between a state CMP and a Federal agency, either party may request that the Secretary of Commerce mediate the dispute. All parties agree to participate, agreement to participate is non-binding, and either party may withdraw from the mediation at any time. Secretarial mediation is a formal process that includes a public hearing, submission of written briefs, and meetings

between the parties. A hearing officer, appointed by the Secretary, will propose a solution. Secretarial mediation is only for states and Federal agencies. Exhaustion of the mediation process is not a prerequisite to judicial review.

The availability of Secretarial mediation or litigation does not preclude the parties from informally mediating a dispute through OCRM or another facilitator. OCRM has successfully mediated disputes and offers its good offices to resolve conflicts between states, federal agencies, tribes and others. Most disputes are addressed through this informal method. Both parties may request OCRM involvement, and participation is non-binding.

G. Appeals to the Secretary of Commerce

The CZMA provides an administrative appeal to the Secretary of Commerce (Secretary) from a consistency objection by a coastal state. In the case of a federal license or permit, an OCS plan, or an application for federal financial assistance, an applicant may request that the Secretary override a state's objection if the activity is consistent with the objectives of the CZMA (Ground I), and/or is otherwise necessary in the interest of national security (Ground II). 16 U.S.C. §§ 1456(c)(3)(A),(B), and (d). Secretarial appeals are not available for Federal agency activities. The requirements for appeals are found at 15 C.F.R. part 930, subpart H. Both states and applicants should pay close attention to the consistency review time periods, six-month stay provisions, objection requirements and appeal procedures in the regulations; otherwise, the Secretary or NOAA may override a state's objection on procedural grounds or dismiss an appellant's appeal for failure to follow the appeal procedures.

If the requirements of either Ground I or Ground II are met, the Secretary overrides a state's objection. The Secretary's inquiry into whether the grounds for an override have been met is based upon an administrative record developed for the appeal. While the Secretary will review a state objection for CZMA compliance, e.g., whether the objection is based on enforceable policies or the state issued its objection within the six-month review period, the Secretary does not review the objection for compliance with state laws and policies.

If the Secretary overrides a state's objection the authorizing Federal agency may authorize the permit or funding that was the subject of the objection. If the Secretary does not override a state's objection, the authorizing Federal agency cannot authorize the permit or funding that was the subject of the objection. A Secretarial override does not obviate the need for an applicant to obtain any state or other federal permits or authorizations that may apply.

The Secretary appeal process is final Federal agency action under the Administrative Procedure Act and is a necessary administrative action prior to litigation. *See* OCRM's Federal Consistency web page at: http://coastalmanagement.noaa.gov/consistency/welcome.html for a list of all CZMA appeals filed with the Secretary. In addition, the NOAA Office of General Counsel has a separate website containing Decisions of the Secretary and the administrative records of ongoing appeals: www.ogc.doc.gov/czma.htm

Factors influencing the appeal process time include: nature and complexity of the dispute, stays agreed to by the parties, public hearings, and briefing schedules. The Energy Policy Act of 2005 amended the CZMA mandating specific deadlines for the Secretary. As a result, in 2006 NOAA amended 15 C.F.R. part 930, subpart H to allow the Secretary to meet the deadlines.

	Coastal Zone Management Act Fed Required by the Energy Policy A (See 15 C.F.R. part 930, s	ct of 200	5 and NOAA Regulations
Day(s) Afte Receipt of Notice of Appeal		ailable for a	appeals of energy projects)
0	Notice of Appeal received		
30	 Publish Federal Register (FR) Notice published by day 30. Public Comment Period and Federa Receipt of Appellant's Brief and Appellant 	l Agency C	al and newspaper notices. Notice <i>must</i> be Comment Period opens.
60	Request for Public Hearing must be	nt periods of received (close unless Public Hearing Request granted.
80	• Receipt of Appellant's Reply Brief.		
	60-Day Stay Granted		No Stay Granted
250	 Publish Notice closing Record; Record <i>must</i> be closed on day 250 	190	 Day 190 is end of 160-day decision record period without stay. Publish Notice closing Record.
310	 Secretary issues Decision or publishes FR Notice re: No Decision–take additional 15 days. 	250	Secretary issues Decision or publishes FR Notice re: No Decision – take additional 15 days.
325	Secretary issues Decision	265	Secretary issues Decision

H. Interstate Consistency

Interstate consistency refers to: a) instances where a federal action occurring exclusively in one state (State "B") will have effects on the uses or resources of another state's coastal zone (State "A"); and b) the ability of State A to review the action. State A may review an action in State B if previously authorized by NOAA. Under NOAA's regulations, states may submit to NOAA a list of those activities occurring in specific areas within State B that the state believes will result in coastal effects. NOAA may approve such activities for interstate consistency review, if it concludes such actions will have reasonably foreseeable effects on State A's coastal uses and resources. Interstate consistency does not give State A authority to review the application of the laws or policies of State B. It only allows State A to review the federal authorization of an activity. The interstate consistency requirements combine with the requirements under the various types of federal actions. The interstate regulations are found at 15 C.F.R. part 930, subpart I.

OCRM's interstate consistency regulations were established to provide a process for reviewing federal actions in another state that would involve greater coordination and consultation between states and Federal agencies, as well as provide notice to neighboring states and Federal agencies and applicants proposing federal actions in nearby states.

However, State A may, but is not required to, describe geographic areas within State B for the review of *Federal agency activities* under 15 C.F.R. part 930, subpart C in their CMPs. This is because, even if not described, a Federal agency has a statutory responsibility to provide State A with a CZMA review for *Federal agency activities* with coastal effects, regardless of location (including within the boundaries of State B). *See* 15 C.F.R. §§ 930.33(c)(1), (d) and 930.155(a). Over the years, federal agencies have provided consistency determinations to states for *Federal agency activities* occurring wholly within the boundary of another state.

See OCRM's Federal Consistency web page for a short history of interstate consistency as well as the status of interstate proposals submitted to and approved by OCRM.

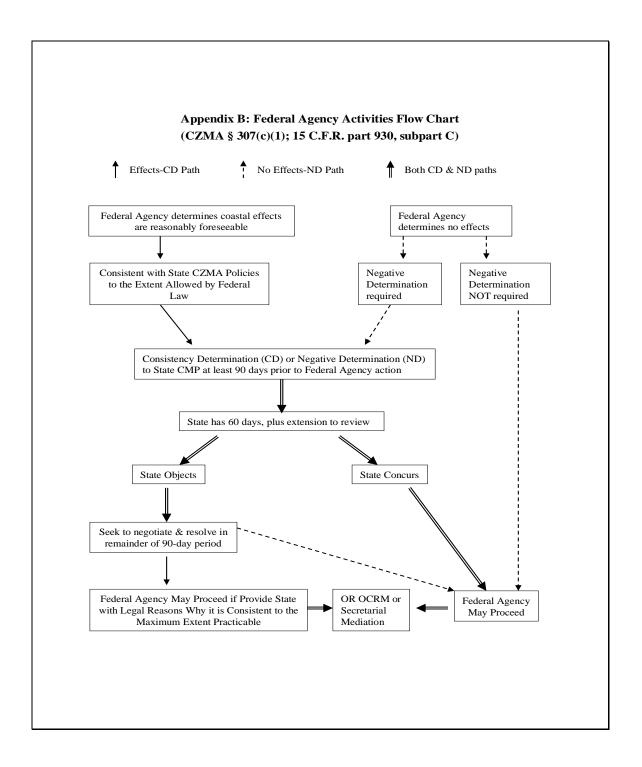
I. Information in State Objection and Conditional Concurrence Letters

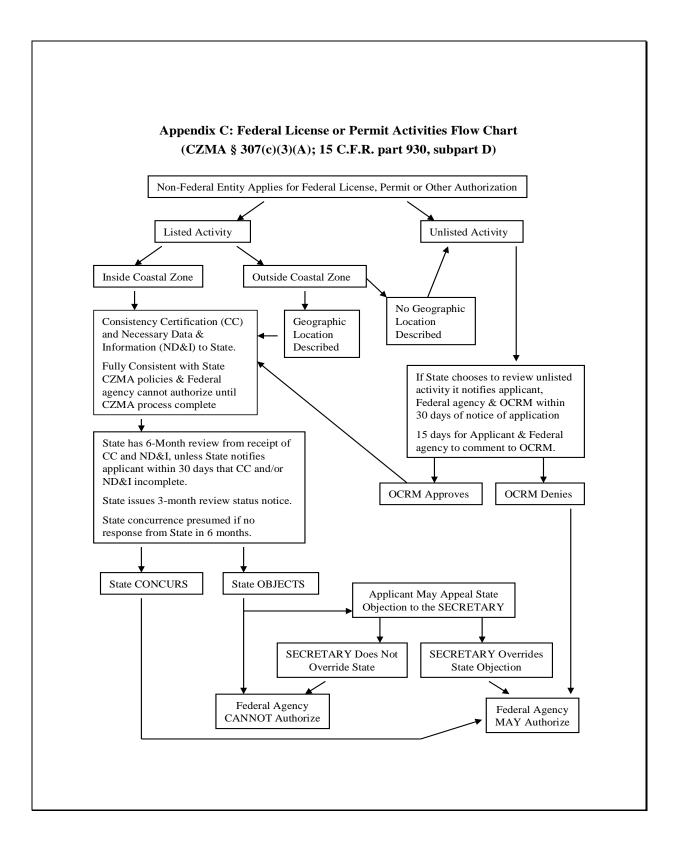
State objection and conditional concurrence letters issued under the CZMA federal consistency provision should include the following information:

- 1. An opening paragraph that clearly states whether the state "objects" to the federal action or is issuing a "conditional concurrence."
- 2. A description of *how* the activity is inconsistent with specific enforceable polices that are part of the state's federally approved CMP. Conditions of concurrence should also be directly tied to the need to be consistent with a specific enforceable policy.
- 3. The objection/conditional concurrence should be received by the federal agency or applicant within the statutory/regulatory time frames. For example, an objection/conditional concurrence letter should document the following dates:
 - Date the complete Consistency Certification (CC) or Consistency Determination (CD) and necessary information was received by the state;
 - Date the state's review period commenced (should be same date as receipt of the complete CC or CD unless alternative agreement);

- For federal license or permit activities and OCS plans, the date the state provided the 30-day "completeness" finding under 15 C.F.R. § 930.60(a), if applicable;
- Date the state's original CZMA decision is due and the revised date, if applicable, based on an agreed-to extension (for Federal agency activities) or stay (for federal license or permit activities);
- Date that the state provided a three-month notice to the applicant for a federal license or permit activity or OCS plan describing the status of the state's review; and
- If an objection is based on a lack of information, the date(s) of the state's written requests for the information made during the state's CZMA review period.
- 4. For federal license or permit activities, OCS oil and gas plans, or financial assistance activities, an objection or conditional concurrence letter should advise the applicant, person or applicant agency, of the right to appeal the state's objection to the U.S. Secretary of Commerce (with a copy to NOAA's Office of General Counsel for Ocean Services) within 30 days of receipt of the letter and should provide the addresses for the Secretary and NOAA General Counsel that are described in NOAA's regulations at 15 C.F.R. § 930.125(d).
- 5. If an objection is based on insufficient information, the objection letter describes the nature of the information needed, the necessity of having that information to determine consistency and the date this information was requested, in writing, during the state's CZMA review period.
- 6. An objection letter may include alternatives that would be consistent with the state's CMP enforceable policies. Consistent alternatives should be described with as much specificity as possible to allow the applicant, or the Secretary of Commerce, to determine if the alternatives are available and reasonable.
- 7. A conditional concurrence letter should state that if the conditions are not agreed to, pursuant to 15 C.F.R. § 930.4, then the conditional concurrence automatically becomes an objection.
- 8. An objection or conditional concurrence letter should be sent to the applicant, the appropriate Federal agency, and the Director of OCRM.

Appendix A: Summa	ary of CZMA Federal	Consistency Provisions	S	
	Federal Agency Activities & Development Projects	Federal License or Permit Activities	OCS Plans	Federal Assistance Activities (State & Local Governments)
CZMA § 307 (16 U.S.C. § 1456)	(c)(1) & (2)	(c)(3)(A)	(c)(3)(B)	(d)
15 C.F.R. part 930	Subpart C §§ 930.30 – 930.46	Subpart D §§ 930.50 – 930.66	Subpart E §§ 930.70 – 930.85	Subpart F §§ 930.90 – 930.101
Activity Subject to State Review if it	Affects any land or water use or natural resource of state coastal zone, regardless of location of activity	Affects any land or water use or natural resource of state coastal zone, and activity is listed in state's CMP or OCRM approves review of unlisted review	Affects any land or water use or natural resource of state coastal zone	Affects any land or water use or natural resource of state coastal zone, and activity is listed in state's CMP or state reviews unlisted activity
Consistency Requirement	Consistent to the maximum extent practicable with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies
Who Decides Effects?	Federal agency	State CMP and OCRM	State CMP and OCRM	State CMP and OCRM
State Review Period	60 days, plus 15 day extension (or alternative period agreed to by state and federal agency)	6 months	3 months – state may extend to 6 months	State clearinghouse schedule
Impact of State Objection	Federal agency may proceed only if provide legal basis for being consistent to the maximum extent practicable	Federal agency may not authorize activity to commence	Federal agency may not authorize activity to commence	Federal agency may not authorize activity to commence
Administrative Conflict Resolution	Mediation by Secretary of Commerce or OCRM (voluntary, non- binding)	Applicant may appeal to Secretary of Commerce to override state objection	Applicant may appeal to Secretary of Commerce to override state objection	Applicant may appeal to Secretary of Commerce to override state objection





Agenda Item: 9c

Meeting Date: April 1, 2010

Page 1

650 Capitol Mall, Fifth Floor Sacramento, CA 95814 www.deltacouncil.ca.gov

Phone: (916) 445-4500

Establishment of Delta Plan Agency Coordination Group

Requested Action: Discuss and direct staff to present at the next meeting a plan for a committee of agencies responsible for implementing the Delta Plan.

Background

This action fulfills the requirement of Water Code Section 85204, which requires that "the Council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies."

Implementing state agencies include the Department of Water Resources, Department of Fish & Game, State Water Resources Control Board, Delta Protection Commission, Sacramento-San Joaquin Delta Conservancy, Department of Food & Agriculture, Department of Business, Transportation and Housing, Department of Boating and Waterways, Department of Parks and Recreation.

The committee also should include at least *ex officio* federal agencies such as the Bureau of Reclamation, National Marine Fisheries Service, U.S. Fish & Wildlife Service, U.S. Geological Survey, U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

Fiscal Information

Because this Committee is called for in statute, these meetings are subject to the Bagley-Keene Open Meeting Act of 2004. This could necessitate rental charges for an auditorium and for webcasting.

List of Attachments

None

Contact

Keith Coolidge Acting Chief Deputy Executive Officer Agenda Item: 9d

Meeting Date: April 1, 2010

Page 1

650 Capitol Mall, Fifth Floor Sacramento, CA 95814 www.deltacouncil.ca.gov

Request for Federal Participation in Delta Plan Development

Requested Action: Send a letter from the Council to the Secretary of the Interior requesting appointment of federal agency representatives to participate in development of a Delta Plan that will be consistent with the Coastal Zone Management Act of 1972, the Clean Water Act, and the Reclamation Act of 1902.

Background

This action fulfills the requirement of Water Code Section 85082 that requires the Council to implement a strategy to appropriately engage participation of federal agencies, that have Delta responsibilities, in Council activities.

Fiscal Information

Not applicable

List of Attachments

None

Contact

Keith Coolidge Acting Chief Deputy Executive Officer Phone: (916) 445-4500

Agenda Item: 9e

Meeting Date: April 1, 2010

Page 1

Direction for Development of Interim Plan

Requested Action: Direct staff to develop the Interim Plan to guide project, plan, and program development until the Delta Plan is adopted.

Background

Water Code Section 85084 requires the Delta Stewardship Council to develop an interim plan that includes recommendations for early actions, projects, and programs.

One of the early measures required of the Council is to develop and implement an interim plan to guide the Council in identifying and evaluating the consistency of proposed early actions with long-term Delta Plan objectives. Early actions will include projects and programs in or otherwise affecting the Delta or Suisun Marsh, and that are proposed by federal, state and local public agencies, as well as non-governmental organizations (NGOs).

Staff recommends that the Interim Plan be developed and contain the following elements:

- Consistency Criteria Develop criteria that can be used by the Council to review and provide timely recommendations regarding the consistency of proposals with likely long-term objectives.
- Covered and Related Actions Identify and develop a comprehensive list of near-term projects, plans, and programs in or otherwise affecting the Delta or Suisun Marsh; as well as criteria to identify such future projects.
- Consistency Review Procedure Develop a process that allows implementing agencies to efficiently submit covered and related actions for Council review and recommendations.
- Coordination Develop a strategy to appropriately engage federal, state, local agencies, and NGOs having Delta responsibilities or activities to participate in Interim Plan reviews.

Fiscal Information

Currently there are no technical staff to work on this activity. Responsibilities for developing and implementing the Interim Plan will be shared with Delta Plan technical staff. Anticipated timeframe for acquiring technical staff is May-September 2010.

Agenda Item: 9e Meeting Date: April 1, 2010

Page 2

List of Attachments

Attachment 1 – Interim Plan Outline

Contact

John Ryan Phone: (916) 445-0672

Program Manager, Strategic Planning

Agenda Item: 9e Attachment 1

Interim Plan Outline

Purpose: Guide early actions, projects, and programs until Delta Plan is adopted.

1. Consistency Criteria:

- Coequal goals
- Ecosystem and water supply sub-goals and strategies
 - Statute
 - Delta Vision Strategic Plan
- Delta as evolving place (cultural, recreational, agricultural values)
- Other (flood, levees, water use efficiency, highways, energy infrastructure, etc.)
- Does not preclude possible future actions

2. Covered and Related Actions:

- Project example: 2 Gates Fish Protection Demonstration Project
- Plan example: Delta Protection Commission Resource Management Plan
- Program example: Department of Fish and Game Proposal Solicitation Package for 2010

3. Consistency Review Procedure

- Early consultations
- Review / recommendations
- Recommendations will not trigger CEQA

4. Coordination

- Federal (early action: strategy to engage feds state/fed work plan)
- Other State
- Local
- Major ongoing efforts
 - o BDCP / DHCCP
 - Flow criteria and recommendations
 - Flood planning

Page 1

650 Capitol Mall, Fifth Floor Sacramento, CA 95814 www.deltacouncil.ca.gov

Direction to Chair to Consult with SWRCB on Selection of Delta Watermaster

Requested Action: Discuss and provide direction to the Council chair to consult with the chair of the State Water Resources Control Board (SWRCB) about the selection of Delta Watermaster.

Background

This action fulfills the requirement of Water Code Section 85230, which requires that "The [SWRCB] in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be "the Delta Watermaster."

The statute further directs that the SWRCB adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions. The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's orders and license and permit terms and conditions that apply to conditions in the Delta.

In addition, the statute requires that the internal procedures adopted by the SWRCB shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The SWRCB may provide any additional duties or needs of the Delta Watermaster that the SWRCB deems necessary for effective day-to-day enforcement of its decisions.

The Delta Watermaster shall submit regular reports to the board and the Council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

Correspondence Received Prior to April 1, 2010 Meeting of the Delta Stewardship Council (1st Batch)

Letter No.	From	Date	Subject
2010-00003	Don Nottoli, Supervisor Sacramento County Board of Supervisors	01-22-10	Development of long-term strategies and solutions which will address land use and water management practices in the Sacramento/San-Joaquin Delta
2010-00004	Jared Huffman, Chair Assembly Water, Parks & Wildlife Committee	02-02-10	DSC Planning Process, Staffing Designations and Other Actions
2010-00005	Fran Pavley, Chair Senate Natural Resources & Water Committee and Jared Huffman, Chair Assembly Water, Parks & Wildlife Committee	02-14-10	Invitation to Attend Joint Hearing Reviewing the Fiscal Support and the Implementation of the 2009 Package of Delta Legislation



BOARD OF SUPERVISORS COUNTY OF SACRAMENTO

700 H STREET, SUITE 2450 · SACRAMENTO, CA 95814

DON NOTTOLI
SUPERVISOR, FIFTH DISTRICT
Telephone (916) 874-5465

FAX (916) 874-7593 E-MAIL: nottolid@saccounty.net

February 10, 2010

Secretary Lester Snow California Natural Resources Agency 1416 9th Street, Suite 1311 Sacramento, CA 95814

Dear Secretary Snow:

On behalf the members of the Sacramento County Board of Supérvisors, I congratulate you on your recent appointment as the Secretary of the California Natural Resources Agency. As you know, developing strategies to address and solve the State's water crisis is a high priority. As 2010 begins, our County looks forward to the prospect of working with you and your staff in the development of long-term strategies and solutions which will address land use and the water management practices in the Sacramento/San Joaquin River Delta.

In Spring 2009, engineers and planners from our Water Resources Department met with your staff (i.e., Joe Grindstaff, Keith Coolidge, Susan Garrett-Dukes, et al.) to discuss the status of the Bay Delta Conservation Plan (BDCP). At the request of the Resources Agency, Sacramento County prepared and presented a list of 14 potential mitigation measures to be analyzed and evaluated for possible inclusion into the final BDCP.

Resources Agency staff has since assembled a list of comments/issues from three other Delta counties, which

Secretary Lester Snow January 22, 2010 Page 2

was distributed for review at the December 17, 2009 meeting of the BDCP steering committee. During the April 2009 meeting, your staff emphasized that some of the issues presented would be worked out within the BDCP process, while others would take parallel but separate paths to resolution with other State agencies. I also want to take the opportunity to clarify that the issues outlined on pages 5 and 6 of the December 17th handout (attached) are general in nature and do not represent a comprehensive "fix it/mitigation" list. It is extremely important to Sacramento County that the above referenced issues are not bifurcated from the BDCP and Delta visioning processes and that each issue is addressed in a complete and comprehensive manner.

In closing, we acknowledge the many challenges you and your staff face as part of the public outreach and consensus building process. Sacramento County remains committed to continue working in partnership with the Resources Agency to produce a final product which will have positive long-term effects on the Delta's ecosystem, water delivery system, and existing communities. If you have any follow-up questions, please contact Michael Peterson, Principal Civil Engineer; Sacramento County Department of Water Resources, at (916) 874-8913 or PetersonMi@SacCounty.net.

Sincerely,

Don Nottoli, Supervisor Fifth District

Don nollali.

DN/lml

Attachment

Cc:

Members, Sacramento County Board Supervisors Robert Ryan, Sacramento County Counsel Michael Peterson, Sacramento County Water Resources

Page 1

Contra Costa County

BDCP Steering Committee meeting 12.17.2009

esolution	PRE- DFG/FWS EIR/EIS Comments Contractors Overlapping Plans					
BDCP Area for Resolution	Ch. 7 Ch. 8 Implementation PRE-					
	Ch. 3 Ch. 4 Ch. 5 Ch. 6					
Issue	Ch. 1	1. How will the BDCP address/incorporate storage needs of the system of which the conveyance project is part? How can capacity of a conveyance facility be determined	absent these other components? 2. DWR has been contacting landowners within Contra Costa County to obtain access to property through temporary entry permits. The County has concern about this process; elected officials need to be informed when these activities are	planned. 3. Some plans call for worsening of water a call for worsening of water guality in the western Delta. Is this the plan? What will be the impact to quality of groundwater? There are a number of individual wells and community well	systems in eastern Contra Costa County. 4. How will you ensure improved water quality for the central and western Delta? To what extent will this water quality rely on maintaining existing	cyeess. 5. When will negotiations for remedial 5. When will negotiations for other fixes) begins 6. What water quality changes (and flow changes) will occur in Old River?

BDCP Steering Committee meeting 12.17.2009

Handout

Issue							BDCP Area	BDCP Area for Resolution		* 1		
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8. How will outflow change under the									-			
BDCP? What changes will occur in			-	-								-
Sacramento: River flow quantity and San												
Joaquin River quantity (changes will												
result in water quality impacts to Lity of	_											
Antioch and CCWD intakes).	1		1	-	-							
10. What impacts will BDCP have on												
water supply to Contra Costa County												
and water providers within the County:			-	-								
11. How will salinity in the south Delta be		_										
addressed? Some models indicate a												
worsening of salinity in the south Delta.		-	-									
12. BDCP Governance seems to be		<u>. </u>						···-				
moving forward with its own					,							
governance, based on who lowns the												
water' and who 'turns' the knobs. Wriet												
assurances do Della Coulties and Control				_								-
have that Delta water quality, increas,		_					-		<u>.</u>			
ecosystems and water populations are	_											
protected: What protection	_											
Act (Water Code Sections 12200 et seq.)												
and what else is required?		+	+		+							
13. How much Delta outflow is needed											¥	_
to sustain and improve resident Delta		_										-
fish and anadromous fish species, and												
how will this be addressed in the												
conservation measures being							,					
developed?		+		+								
14. How much water does the ecosystem												
need in any given season of any given	-						-					
water year? Until this is determined,												
project and program planning seems												

BDCP Steering Committee meeting 12.17.2009

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arematiire		+											
Will reductions in export quantity be			-		_		•						
considered by the BDCP? If so, at what					<u> </u>								_
stage of the process? If not, why not?		+		+	+								
16. Will the EIR/S look at a non-structural													
alternative that relies on statewide													
water conservation, recycling,				`									
watershed management and regional				*									T
self-sufficiency?	+	+	+	+	+	1							
17. How can you size the Peripheral													
Canal without having additional detail				-							,		
relative to flow needs for fisheries?	_												
Given the direct, quantifiable scientific													
correlation between flow and fish													
abundance, this information would seem					•								
important to have prior to decisions							-						1
related to capacity of a canal.		1	1		1					,			
18. Under drought or low rainfall years,									•				
how will water quality in the PC be													
maintained, if not from continual flow?													
In other words, the bigger you build it,													_
the more flow it will take to maintain													
water quality for PC water exports. Has			_										
DWR looked at this size/flow issue and													
resulting impacts on other water													
contracts in a drought situation?													
aq.What is the design earthquake for the													
PC? What will it take to make the PC													
capable of withstanding the Maximum													_
Credible Earthquake? What will such a													
PC look like and cost?								-					
20. There are a number of immediate													
actions recommended by the County,													
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BDCP Steering Committee meeting 12.17.2009

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21. What is the cost of the proposed isolated facility? Were the cost estimates prepared responsibly by							
isolated facility? Were the cost			•				
estimates prepared responsibly by							
accounting for known obstacles/issues							
(difficult soils, drainage, river crossings,							
wildlife corridors, known vulnerabilities							
in related SWP facilities, mitigation		_					
funding)?							
Mill therapal as proposed be strong				-			
22. Will the curvive a major seismic event							
in the Delta? What would be the cost of							•
fully armoring the canal to withstand a							-
significant Delta earthquake? What							
shout seepage and evaporation losses?				i			

BDCP Steering Committee meeting 12.17.2009

Agreement Agreement PRE-Contractors DFG/FWS EIR/EIS Overlapping Plans Plans

BDCP Steering Committee meeting 12.17.2009

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b. Mitigate ongoing economic losses to b. Mitigate ongoing economic losses to local/regional community resulting from reduction in ag protection 112. Wellands Creation 113. Wellands Creation 114. Wellands creation to owners 115. Wellands creation to owners 115. Wellands creation to owners 116. Provide full compensation to owners 117. Wellands of a creation to owners 118. Wellands creation to owners 119. Provide Journal or owners 119. Provide Journal or owners 129. Provide Loss of ag 129. Provide Journal or owners 129. Ensure welland creation does not conflict with local HCP 129. Ensure well and conflict with local HCP		Ch.3 Ch.4 Ch.5 Ch.6	Ch. 8 Implementation Agreement	PRE-Contractors	DFG/FWS Overlapping Plans	EIR/EIS	Comments	·
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Solano County

BDCP Steering Committee meeting 12.17.2009

Comments EIR/EIS DFG/FWS Overlapping Plans Contractors BDCP Area for Resolution PRE. Implementation Agreement Ch. 8 Ch:/2 ch 6 Ch. 5 Ch. 4 Ch. 1 Ch. 3 payment of district assessments for funding for 6. No adverse changes to flood protection for surrounding areas including increased costs for responsible entity for monitoring and adaptive management of habitat projects and 10. Analyze and mitigate for any flood impacts 13. Delta representation as a voting member on all governance bodies involved in oversight of the Delta business opportunities and income; continued from project proponents; emergency services and road impacts; along with increased flooding due to changes that will be handled 1. Payment of in-lieu property taxes for lands 2. Payment for lost business opportunity and O & M and infrastructure (including levees) 4. Mitigation of costs for increased public services (e.g. law enforcement, fire, rescue, agricultural land converted to habitat (lost income, including socio-economic issues 3. Continued payment of special district assessment(s) and fees changing from private to public hands roads, drainage, flood protection) 5. Mitigation for economic impacts of 7. Funding and establishment of the O & M and regulatory compliance Issue through the CEOA process associated lands

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Comments EIR/EIS DFG/FWS Overlapping Plans Contractors BDCP Area for Resolution PRE-Implementation Agreement Ch. 8 Ch. 6 Ch. 7 Ch. 4 Ch. 5 Ch. 3 Ch.1 non-point discharges so that local runoff is not quantity intent. 20. Credits for the counties and special district 15. Permanent protection/preservation of like or better quality agricultural lands for agricultural lands converted, compliance with local policies regarding conservation 16. Maintain water quality by establishing Safe Harbor for agricultural and urban point and 19. The North Delta Water Agency Agreement with the State of California shall remain in full force and effect, both as to the specific terms 17. Mitigation for increased organic carbon at requirements due to creation of new habitat of the agreement and the water quality and associated with county and special district 18. Mitigation for changes in salinity in the north Delta and in the Suisun Marsh public works projects (e.g. roads, bridges, projects need to respect mineral Rights – (BDCP) A part of HCP Implementation levee work) as part of habitat projects 21. Mineral Rights – Habitat Restoration required to be improved above normal to obtain mitigation of future impacts Issue 14. Willing sellers only North Bay Aqueduct

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BDCP Steering Committee meeting 12.17.2009

Issue					2 Al.			BDCP Area f	BDCP Area for Resolution				· .	
	Сh. 1	Ch. 3	Ch. 4	Ch. 5	ch. 6	Ch. 7	Ch. 8	Implementation Agreement	PRE- Contractors	DFG/FWS Overlapping Plans	EIR/EIS	Comments		
a. Provide new municipal water for the City of Davis, City of Woodland, and UC Davis, including expeditingpermits and providing habitat mitination neessary for implementation														
2. Provide farmers with safe harbor agreements, fish screens, and buffers related to habitat areas or conveyance facilities.									-					
3. Ensure that habitat restoration is consistent and integrated with and the Yolo County Natural Heritäge Program, and as part of that											\$ 1 1		;	·
integration: Expedite permitting and provide habitat mitigation for any County or Reclamation District improvements within the Clarksburg						•		_						
region and Yolo Bypass, including but not limited to the construction and maintenance of roads, budges, levees, and irrigation											*****	,		
o The Bay Delta Conservation Plan (BDCP) nust provide permitting and regulatory assurances for actions that the County, the														
Cities of West Sacramento, winters, Woodland and Davis, special districts, other public agencies, and local nonprofits in the County undertake that have the potential to result in the regulatory take of any of the														· · · · · · · · · · · · · · · · · · ·
BDCP target species 4. Remediate mercury in the Cache Creek watershed at its sources: O Design and develop habitat restoration														
projects so as not to increase existing levels														1

BDCP Steering Committee meeting 12.17.2009

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labor entio bfor land land eship of route viral of spass Pacfic paired; patied; fithe fithe fithe	Cache Creek Settling Basin 5. Improve flood protection along the Sacramento River and for the Yolo Bypass											.
ting and future and transport lub for ding its levees; tting and reserve land and reserve l	6. Replace and expand any displaced farm labor		-		,							<u> </u>
the region, including its leves? Expedite permitting and reserve land for specific permitting and reserve land for specific permitting and reserve land for specific permitting and reserve land channel size test both it can record the continued operation of specific permitting and reserve land channel size test both the continued operation of specific permitting region; C. Protect the continued operation of specific permitting and permitting region; C. Protect the continued operation of the Clarkburg region; C. Protect the continued operation of the Clarkburg region; C. First that the future expansion of integrate to a continued operation of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C. First that the future expansion of the Clarkburg region; C.	y. Protect infrastructure: a. Protect the existing and future operations of the Port of Sacramento											<u> </u>
c. Protect the continued operation of State Route is sa major truck route freighters; c. Protect the continued operation of State Route is as a major truck route for the transportation of agricultural for the transportation of agricultural products out of the Clarksburg region; d. Erroure that the future expansion of the Clarksburg region; d. Erroure that the future expansion of the Clarksburg region; d. Erroure that the future expansion of the Union Pacific Raiload are not precluded or impaired, and e. Ensure that that expanses to the operation of the County Road 22) 8. Ensure that changes to the operation of the Fremont Weir Volo Bypass toe drain, or other proposals do not adversely affect planned.												<u> </u>
torducts out of the Clark During region; d. Ensure that the future expansion of agricultural products out of the Clark During region; d. Ensure that the future expansion of linestate Bo across the Yolo Bypass and improvements to the Union Pacific Railroad are not precluded or impaired; and e. Ensure that any changes to the operation of the Sacramento Weir do not adversely affect Old River Road (County Road 22) 8. Ensure that changes to edrain, or other prenation of the Frenont Weir, Yolo Bypass toe drain, or other proposals do not adversely affect planned												<u> </u>
e. Ensure that any changes to the operation of the Sacramento Weir do not adversely affect Old River Road (County Road 22) 8. Ensure that changes to the operation of the Frenont Weir, Yolo Bypass toe drain, or other proposals do not adversely affect planned						 						
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	(County Road 22) 8. Ensure that changes to the operation of the Fremont Weir, Yolo Bypass toe drain, or other proposals do not adversely affect planned											

BDCP Steering Committee meeting 12.17.2009

	Comments					
	EIR/EIS					
	DFG/FWS Overlapping	Plans				
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Issue			development of the future Elkhorn Specific Plan	9. Fund construction and operation of the Pacific	Flyway Center next to the Yolo Bypass	

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STATE CAPITOL P.O. BOX 942849 SACRAMENTO, CA 94249-0119 (916) 319-2096 FAX (916) 319-2196

Assembly California Legislature

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

March 2, 2010

JARED HUFFMAN
CHAIR

Delta Stewardship Council Correspondence 2010-00004

2010 HAR -4 PH 3: 20

Lester A. Snow, Secretary California Natural Resources Agency 1416 Ninth Street, Suite 1311 Sacramento, CA 95814

Dear Secretary Snow:

The creation of the Delta Stewardship Council (DSC) was one of the centerpieces of last year's historic water legislation and reflected a point of consensus among most stakeholders as well as the Governor's Blue Ribbon Task Force: a new, independent governance entity was needed because the existing mechanisms for making policy and governance decisions affecting the Delta lacked transparency, accountability, and independent science, and as such were inadequate to achieve the co-equal goals of restoring the Delta ecosystem and providing a reliable water supply for California.

Indeed, one of the central points of creating the DSC was to take key decisions that are currently the responsibility of existing agencies, including the Department of Water Resources (DWR), and to invest those decisions in a body carefully constituted for balancing broad competing interests and ensuring that the co-equal goals are met. Toward that end, SB 1 7X specifically empowers the DSC to choose its own chair, executive officer, and staff to assist the council in carrying out its most critical immediate task: crafting a Comprehensive Delta Plan.

As you know, DSC members have yet to be named or confirmed. However, in recent weeks DWR has taken it upon itself to start the process of soliciting and hiring consultants on behalf of the DSC. In addition, in the temporary vacuum created by the fact that DSC members have yet to be named and confirmed, the administration is apparently directing former CALFED Bay-Delta Authority staff, who were transferred by the legislation to the DSC, to move forward with DSC decisions. It is my understanding that last month, DWR issued a Request for Qualifications on a Project Director and Project Manager for the Delta Plan. That RFQ, which closed last week, references a "Delta Plan Team" consisting of DWR engineers and DSC "Executive Staff" that will begin reviewing applicants. Needless to say, the unformed DSC has had no input into this process. And yet, according to the proposed timelines in the solicitation, the "team" is currently reviewing applications and will be holding interviews this week. Also troubling is the fact that one of the principal requirements of the solicitation is that the Project Director or Project Manager must be a licensed civil engineer, thus foreclosing the possibility that the DSC might wish to consider applicants with different backgrounds and professional qualifications to oversee plan development. It is debatable whether restricting key consulting positions to licensed engineers is appropriate, but it should be beyond debate that such decisions must be made by the DSC, not DWR.

The inappropriateness of these actions is not cured – rather, it is underscored -- by the solicitation's inclusion of one proposed day of review by the as-yet-unnamed DSC members, particularly since the schedule calls for this token review to occur in about a week – well before DSC members could be confirmed, even if a quorum of the DSC has been named by then.

Many stakeholders throughout California are hopeful that the DSC, and the Delta Plan it will soon develop, will provide a viable path forward to address vexing challenges in the Delta. I appreciate and share the administration's desire to move forward expeditiously with development of the Delta Plan, but we must also carefully protect the credibility and independence of the DSC. The success of this new governance and planning framework is too important to allow one agency's perspective to dominate it or to allow the administration to preemptively make decisions for the DSC in contravention of both the letter and spirit of SB 1 7X. Simply put, the DSC must be allowed to constitute itself and control its own work instead of being asked to begin with a consulting team, staff and executive officer all hand-picked by DWR and the administration. Stacking the deck in this manner would undermine the credibility of the DSC's work before it has even begun.

For these reasons, I am requesting your assurance that DWR will suspend its current efforts to preemptively influence the DSC planning process, and that the administration will likewise rescind any premature DSC staffing designations and other actions that presuppose how the DSC will choose to proceed. These corrective actions are essential to ensure that the unformed DSC will start its work with the independence and credibility the legislature intended it to have.

I look forward to hearing from you.

Sincerely,

Jared Huffman, Chair

Assembly Water, Parks and Wildlife Committee

JH/tcl

cc: Honorable Darrell Steinberg, President pro Tem of the Senate
Honorable Fran Pavley, Chair, Senate Natural Resources and Water Committee
Mark Cowin, Director, Department of Water Resources
Joe Grindstaff, Acting Executive Officer, Delta Stewardship Council

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2010 MAR -2 AM 8: CALIFORNIA LEGISLATURE

STATE CAPITOL SACRAMENTO, CALIFORNIA 95814

February 24, 2010

Mr. Joe Grindstaff, Executive Director Delta Stewardship Council 650 Capitol Mall, 5th Floor Sacramento, CA 95814

Re: Joint Hearing on Implementation of Delta Legislation

Dear Mr. Grindstaff:

We are writing to invite your attendance at a joint hearing that will review the fiscal support and the implementation of the important 2009 package of Delta legislation. The hearing will be conducted by the two relevant policy committees of the Legislature and the two appropriate fiscal subcommittees.

The hearing is scheduled for Tuesday, March 9, 2010 in Room 437 of the Capitol. This is the regular meeting room of the Assembly Water, Parks and Wildlife Committee, one of the co-sponsors of the hearing.

The hearing will consist of three segments: (1) The Legislative Analyst's Office will provide a summary of the legislative package and any implementation issues it has identified. (2) A panel composed of yourself, and Lester Snow will be asked to identify funding mechanisms that are in place or proposed to implement the goals of the legislative package with emphasis on those provisions facing the most immediate statutory deadlines. (3) A panel of Bay Delta Conservation Plan representatives from state agencies responsible for implementing key requirements of the 2009 Delta legislation, again focusing on the provisions facing the most immediate statutory deadlines. Those invited for the third panel include, Karen Scarborough, John McCamman, Mark Cowin, Dorothy Rice, and Linda Flack. There will also be an opportunity for public comment.

i de la graditation de la completa Per la completa de l This very important hearing sets the stage for the successful budgeting and implementation of last year's Delta legislation, a package of bills representing years of hard work by members of the invited panels, respective policy committees, and budget subcommittees. Please let either Bill Craven of the Senate Natural Resources and Water Committee or Tina Cannon Leahy at the Assembly Water Parks and Wildlife Committee know if they can help with preparations for the hearing or answer any questions.

Thank you for your participation.

Sincerely,

Fran Pavley, Chair

Senate Natural Resources and Water

Jared Huffman, Chair

Assembly Water Parks and Wildlife

Agenda Item: 10 Meeting Date: April 1, 2010

Page 2

Fiscal Information

Not applicable

List of Attachments

None

Contact

Keith Coolidge Acting Chief Deputy Executive Officer Phone: (916) 445-4500